

HOUSE RESOLUTION No. 234 TO
INQUIRE INTO AND CONCERN-
ING THE OFFICIAL CONDUCT *of*
EMORY SPEER, U. S. DISTRICT
JUDGE FOR THE SOUTHERN
DISTRICT OF GEORGIA

STATEMENT AND REPLY
of
JUDGE EMORY SPEER

JK 1595
1914

By Wm. M. Scott

MAY 8 1914

JUDGE SPEER'S DEFENSE.

To the Honorable Edwin Y. Webb, Chairman, the Hon. Louis FitzHenry, and the Hon. A. J. Volstead, Members of Sub-Committee House Judiciary Committee:

There is brief consideration of a general nature to which Judge Speer respectfully requests the attention of your Honorable body.

Before its members will have received this defensive statement, he will have been a judge for twenty-nine years. He had previously been appointed Solicitor-General by Hon. James M. Smith, Governor of Georgia. This was in 1873. He was elected to the Forty-Sixth Congress in 1878, and re-elected to the Forty-Seventh. He was then appointed *ad interim* United States District Attorney for the Northern District of Georgia. This was March 5th, 1883. He was reappointed at the next session of Congress, and was confirmed by the Senate. He was then appointed Judge by Chester A. Arthur, President, and was confirmed by the Senate on the 18th of February, 1885. There are two, possibly three other judges of the National Courts who have had service in their present stations a little longer. One of these is the Dean of the National Judiciary, the Honorable Don A. Pardee, the Senior Circuit Judge of the Fifth Circuit.

The President who appointed Judge Speer, and every member of his Cabinet, are now in a majority whose number will never be diminished. Of the members of the Senate which confirmed him, but few survive. One is that great American lawyer, George F. Edmunds, of Vermont, for a quarter of a century a member of the Senate, and long Chairman of its Judiciary Committee, whose confidence then, unbroken since, has afforded enduring inspiration.

Of the Ways and Means Committee of the House, William D. Kelly, of Pennsylvania, John A. Kasson, of Iowa, Mark H. Dunnell, of Minnesota, William McKinley, Jr., of Ohio, J. A. Hubbell, of Wisconsin, Dudley C. Haskell, of

Kansas, Wm. A. Russell, of Massachusetts, Russell Errett, of Pennsylvania, J. Randolph Tucker, of Virginia, Samuel J. Randall, of Pennsylvania, John G. Carlisle, of Kentucky, William R. Morrison, of Illinois, the then young member from Georgia, is the sole survivor.

Of the entire Georgia membership of the House of the Forty-Sixth and Forty-Seventh Congresses, only Interstate Commerce Commissioner, the Hon. Judson C. Clements, and Judge Speer survive.

The Georgia Senators of that day are also gone. The incomparable Benjamin H. Hill, the gallant and chivalric John B. Gordon; the attractive and persuasive Alfred H. Colquitt, the wise, sagacious and prescient Joseph E. Brown, have long ago joined the illustrious throng of that mighty generation to which they belonged.

Then the Chairman of this Committee was a lad of thirteen, and the other members little, if any, older. These facts are mentioned that the Committee may possibly reflect how singular it is that with a tenure of service so long that now for the first time in American history, an American Judge has been subjected to the ordeal Judge Speer now endures.

In that time also, mighty changes have been made in the duties of a judgeship such as his. When he was first appointed, certain giants of the Constitution were yet asleep. The commerce power had been scarcely utilized, and the great Commerce Commission was yet unknown. No National enactments had been framed to control combinations in restraint of trade; little provision had been made for the regulation of railroads; no safety appliances provided for the mighty army of unpretending heroes whose duty it is to handle the masses and direct the velocities which multiplied make the momentum of civilization. The employee mutilated or perchance killed by the negligence of a fellow must then rely, upon the cruel rule of the English law, for Congress had not then framed the humanitarian act which now affords to millions of manly, kindly hearts the assurance of comfort for his loved ones if life or limb be lost by

such negligence of his fellow. Then the employer's liability act was not more novel and unknown than those settled principles of jurisprudence which now forbid the absorption by holding companies of competing lines, which then placed communities, cities and states at the mercy of the voting trust. The Corsican Emperor himself was scarcely more irresistible than the Napoleon of Finance of that day and time. That the Government should interfere with rates of transportation was monstrous; that the courts or Congress should concern themselves about strikes, wages, or contracts of labor, was unthinkable. Paltry appropriations, it is true, were made for rivers and harbors. Contractors there were, but the morale of that Engineer Corps, which produced a Gilmore, and a Goethals, a Beauregard and a Lee, was deemed protection the most ample for all the public money Congress might appropriate for such purpose to advance the people's welfare.

Nor was this all, involuntary servitude was deemed a thing of the past. Slavery had been long abolished. But so many former slave-holders and former slaves survived and so kindly was their mutual regard that peonage was impossible, and the peonage statute regarded as a nullity by many, and by all as without value and use. But a mighty change was coming. The United States Courts were soon to be brought closer to the people. Then, in the broad, splendid territory to which Judge Speer's duties extend, there were two places of holding the United States Courts. There are now five. Then few people had business in the courts. Now they hold their sessions in every section of the State. Then, too, the collection of debts, with rare exception, was remitted to the courts of the State. There was no Bankruptcy Law. Now the Uniform System has made the courts of the United States the collection and distribution agencies of the people, with all the labors and burdens of the most difficult and thankless task which courts are called upon to perform. With the expanding of jurisdiction, and the widely enlarged range of topics therein involved, there also came wide increase of responsibility, and the ever enhanc-

ing danger of those resentments which attend judges charged with the ascertainment of crime, the detection of fraud, the regulation of corporate power, the protection of human liberty and the enforcement of obedience to law. Then also for the first time was there brought before the court, corporations and individuals, who because of wealth, influence and power could make the resentment of their officials or of their attorneys seem threatening to the judiciary.

A distinguished witness, the Honorable S. B. Adams, has testified in the hearing of the Committee, that no doubt Judge Speer (charged as we have stated with all of these increasing duties and dangers), was very much surprised to learn that his judicial services were unsatisfactory to a majority of the Bar. Judge Speer has yet to learn that fact, and ventures to question it. True enough, certain individuals have given testimony to that effect, but most of them have testified with manifest intensity of feeling and bitterness of language and recklessness of statement which do not carry conviction to those trained in the ascertainment of impartial truth. The testimony of such men has given him pain, but no great surprise. He knows who they represent. He recalls that it has been his duty by proper, if effective judicial action, to occasion disappointment not only to their ambition but to their avarice. This duty has been cast upon him in case after case conferred by the expanding jurisdiction, in recent years, of the courts of which he is a judge, conferred by acts of Congress, made for the betterment of the people, or ascertained to exist by decisions of the Supreme Court. It will be an easy task to turn to the record and precisely locate the occasion and cause for the calumny, and discover that every important detractor was the professional advocate and representative of the evils which it had been and is the purpose of Congress to annul and destroy.

The Committee should recall that this scrutiny extends to Judge Speer's entire judicial life. It began with an incident twenty-eight years ago. It closed with another which transpired months after the department's detectives were on the

ground sedulously interviewing such enemies as every efficient judge must make.

While this is true, and while Judge Speer was not informed of the accusations against him, while he was permitted to call no witnesses, and only definitely apprised that he would be permitted to testify himself a moment before he was sworn, it is submitted that from the records, and with indisputable proof, he has met and confuted every imputation on his honor as a man, on his integrity as a judge. The best evidence of judicial action is the court record. It will be seen that where this was possible, in no appeal to the record for vindication has such appeal failed. No semblance of moral turpitude or self-seeking is shown. True, twenty-eight years ago, with meagre salary, in his struggling young manhood, a loan was offered him by one, then a personal friend; it was accepted, and when demanded, it was instantly repaid. Of self-aggrandizement this is the only pretence in the record, save the vague suspicion of one characterized by the star witness for the prosecution as the false and mentally unbalanced Ambassador of his Satanic Majesty on Earth.

It is true that a number of attorneys have expressed unfavorable opinion of Judge Speer's judicial characteristics.

Probably the most pronounced of these was Mr. Alexander Lawrence. He said much of Judge Speer, but it is all summed up in this, "my estimate, my judgment about him, that the worst thing about him is that he is a misfit."

Mr. FitzHenry: A misfit?

Mr. Lawrence: Yes, sir.

Mr. FitzHenry: In what way?

Mr. Lawrence: He should never have been a judge; he has not got the judicial temperament; he has not got the judicial mind; he has not got the judicial character. I believe if he had remained at the Bar he would have made one of the greatest advocates that ever lived, because he is talented in that line, and talented as I have never seen anybody else. He is the best cross-examiner of a witness I have ever known; he knows the jury,

knows how to play on their passions, on their prejudices, as no living man that I have seen could do it; he has a faculty for marshalling evidence that I have never seen another living man able to marshal; and in that Green & Gaynor case he charged that jury for eight hours, and I will challenge any six prosecuting attorneys in the United States, from the Attorney General down, all of them together, to take that mass of testimony taking three months' time that Judge Speer heard, and then put it down in as ingenious an argument against the defense as Judge Speer put it in that thing. It was a masterpiece of oratory, but a very poor thing when you come down to look at it from the judicial standpoint." (Stenographic Record, pp. 1498-9.)

The trouble with this statement of Mr. Lawrence is, he seems not to appreciate the duty of a United States Judge in his charge to the jury. Said the Supreme Court of the United States in *Nudd vs. Burrows*, 91 U. S., p. 439:

"It is the right and duty of the court to aid the jury by recalling the testimony to their recollection, by collating its details, by suggesting grounds of preference where there is contradiction, by directing their attention to the most important facts, by eliminating the true point of inquiry, by resolving the evidence, however complicated, into its simplest elements, and by showing the bearing of its several parts and their combined effect, stripped of every consideration which might otherwise mislead or confuse them. Constituted as juries are, it is frequently impossible for them to discharge their function wisely and well without this aid. In such cases, chance, mistake, or caprice may determine the result."

This was the unanimous holding of the great court. It has never been departed from. The practice is exasperating to gentlemen fresh from the state courts where the Judge cannot in the slightest respect remind the jury of any feature of the evidence or what has or has not been proved. The "dumb act," as Chief Justice Bleckley denounced it,

was enacted in 1850, and was doubtless designed by some member of the Bar whose professional services, like those of Mr. Lawrence, were often enlisted in behalf of those who sit in the seats of the mighty, and who are yet occasionally indicted for crime, fraud or other wrongs. It is the best opinion of the Georgia Bar that this act has done more to make the enforcement of the criminal law uncertain, than all other causes put together. From this may result the unhappy fact that in one Georgia city there are more homicides in one year than in the United Kingdom of Great Britain and Ireland. The charge to the jury in the Green & Gaynor case, it is true, presented a difficult task. It must consider the engineering incidents of twenty-five years and many questions novel to the ordinary administration of justice. It was approved by a majority of the Circuit Court of Appeals and not disapproved on application for *certiorari* by the Supreme Court of the United States. It is reported in 146 Fed., 803, along with other rulings made during that arduous trial, the result of which affords, it is submitted, an invaluable precedent for the protection of the treasury.

The Committee will of course recall that three of the witnesses who testified against Judge Speer with greatest acerbity were Mr. W. W. Osborne, Mr. A. A. Lawrence and Mr. P. W. Meldrim. They were all three of counsel for Green & Gaynor, and the result of the trial was doubtless far and away the most bitter disappointment of their professional lives. Two of these gentlemen, Messrs. Osborne & Lawrence also represented Miller Brothers, the Philadelphia grain merchants, who had been given rebates on the transportation of their commodities by the Merchants' & Miners' Transportation Company, the Atlantic Coast Line, and the Seaboard Air Line Ry. The two railways pleaded guilty, and were fined two thousand dollars each. Mr. Meldrim was of counsel for the Atlantic Coast Line. The Miller Brothers' case went to trial, and after a careful and patient hearing, the senior member of the firm was convicted. Doubtless these also were clients of an invaluable sort. The result of these and other cases where Mr. Law-

rence did not achieve his accustomed success impels him to the belief that the Judge is a "misfit." Whether or not an individual is fitted for the judgeship is committed by the organic law to the President with the advice and consent of the Senate. The conclusion of the constitutional authority is final.

Mr. Osborne refers on pages 2080-2, Stenographic Record, to the endorsement given Judge Speer by the Savannah Bar for promotion to the Circuit Court of Appeals.

This, fortunately, is a record of the Department of Justice. The seal of the Department shows it. Of this the Committee will doubtless take cognizance. It has been taken from the files of the Department as the letter of the Appointment Clerk will show. It was made in 1904. Judge Speer was fifty-five years of age. At that age a man's character is always formed. He had been nineteen years on the bench; he had then served two-thirds of his judicial life; the Central Railroad litigation had ended. Most of these witnesses had been members of the Bar since his appointment to the bench. Lawrence had been a practitioner before the court for thirteen years. Osborne for a longer time; Colding, Adams, Twiggs, Mackall and Meldrim from the first. The testimonial to the President of Judge Speer's reputation as a Judge is deliberately and carefully prepared.

And now to the record. It is herewith appended.

Upon this testimonial, produced with the exactness of the photographer's and engraver's art, the original of which Judge Speer holds and offers to submit to the Committee, he appeals to the non-partisanship and sense of justice of these Representatives of the American people. Following the testimonial of the members of the Savannah Bar commending him, is a testimonial not less prized from the business community of Georgia's great seaport city, and let it be added that of the great merchants, manufacturers and other business men, despite the intense interest in the investigation, and its country-wide publicity, not one appeared to utter a word of disparagement of Judge Speer. Let it also be added that of the lawyers whose names are

signed, most of whom survive and yet reside in Savannah, only a very few appeared, and they mainly the representatives of those mighty interests which the legislation of Congress has subjected to the jurisdiction of the National Courts.

ANTON P. WRIGHT,
Attorney and Counselor at Law,
SAVANNAH, GA.

Jan. 31st, 1903.

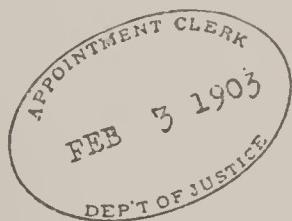
To-

The President,
Washington, D. C.

Sir:-

The undersigned have the honour to hand you herewith a memorial from the Savannah Bar urging the appointment of the Honorable Emory Speer to the bench of the United States Circuit Court of Appeals for the Fifth Circuit whenever a vacancy thereon may occur.

Very respectfully,



Anton P. Wright.
W.W. Gordon Jr.



To -

The President :-

The public prints having advised us of the contemplated retirement of the Honorable Andrew P. McCormick from the bench of the United States Circuit Court of Appeals for the Fifth Circuit, the undersigned members of the Savannah Bar respectfully present for your favourable consideration the name of the Honorable Emory Speer for the vacancy when it may occur. The long and faithful service of Judge Speer on the bench of the District Court during which time questions of the utmost moment have been settled by him with unusual ability indicates him as pre-eminently fitted for the new honour with which his name is now associated.

During his administration this community has not only benefitted by the singular ability and clear thought which he has brought to bear upon the issues which have been submitted to him, but our observation justifies us in declaring him one of the most humane of judges. During his term not only has crime diminished but his eloquent charges to the juries impaneled in his court have done more than any other influence to make the people of Georgia feel that the Federal Court is one of their own institutions.

The variety of novel points which have arisen in the cases tried by him, many until then undetermined, have demanded an acuteness of intellect and patience of research rarely exacted in the judicial career of any judge. His success in this direction, illustrating his pre-eminent fitness for the

bench of the Circuit Court, is of record in the published reports; the daily evidences of usefulness to the public and consideration for the misguided and helpless are matters to which it is just that we should invite your attention since they appear only inferentially in the plain statement of judgments.

We beg to add that the state of which Judge Speer is an honoured son has never had a native born citizen upon the Circuit bench. With the great interests which are necessarily at stake in the Circuit Court of Appeals it would seem to be demonstrated that Judge Speer, who otherwise qualified, has that intimate local knowledge which enlightens the labours of a judge in any event, becomes a natural successor to the eminent jurist who is about to retire from the public service. -

<u>Joachim R. Sausay</u>	<u>Sime. B. Adams</u>
<u>Walter Charest</u>	<u>Geo. W. Owen</u>
<u>A. P. Richards</u>	
<u>P. J. Flannor</u>	<u>M. A. O'Byrnes</u>
<u>Bethel C. Thistle</u>	<u>G. A. Macrae</u>
<u>Geo. A. Mercer</u>	<u>Alexander Rutherford</u>
<u>Henry G. Cunningham</u>	<u>J. M. Cunningham</u>
<u>H. W. Johnson</u>	<u>John M. Draper</u>
<u>Franklin Tamm</u>	<u>A. H. Mac Donell</u>
<u>P. J. Morris</u>	<u>Edward S. Elliott</u>
<u>James Blane</u>	<u>W. P. Hardie</u>
	<u>William R. Leakey</u>

<u>W. T. Davis</u>	Gordon Dansey
R. G. Richards	<u>W. L. Clay.</u>
<u>Jacob Gazan</u>	John Taylor Chapman
Edmund Leffler	A. Pratt Adams
<u>M. H. Wade</u>	Kobt J. Fair
<u>H. S. Williams</u>	Chas Edwards
<u>Jhos N Denmark</u>	Davis Freeman
<u>Robert M. Hatch</u>	<u>James M. Rogert</u>
<u>W. R. Boyd</u>	<u>Cosmo Robertson.</u>
<u>Thos. J. Walsh Jr.</u>	Richard W. Charlton.
<u>William Egan</u>	<u>P. W. Meadwin.</u>
<u>Ben C. Quincy</u>	V. M. Myers
<u>John C. Conner</u>	<u>W. P. Gillock</u>
<u>M. J. Slater</u>	Chas V. Holman
<u>W. J. Morgan</u>	J. Penn Cain
<u>L. H. Allen</u>	John S. Schley
<u>J. Randolph Dawson.</u>	Walter T. Johnson
<u>W. B. Stephens</u>	<u>W. E. Myrick</u>
<u>H. M. Lewis</u>	<u>W. F. Strobs</u>
	John E. Schwarz
	<u>W. W. Gordon Jr.</u>

L. Gordon Harvey	<u>Geo. W. Buffet</u>
Edmund N. Abrahams	L. L. Lawrence
<u>David Darrow</u>	<u>James F. Evans</u>
<u>Thos. J. Hie</u>	<u>H. D. D. Durrigg's</u>
* W. D. Osborne	Robt L. Leodring
<u>H. L. Alexander</u>	F. M. Oliver
Groble Jones	Alfred D. Larson
Frederick T. Daussy	<u>Wm. J. Gigneciat</u>
<u>D. D. Hanson</u>	<u>J. S. Lazarus</u>
* <u>Wm. T. May Jr.</u>	<u>J. P. Loveland</u>
	<u>Wall-Wilson</u>

To the President:

As members of the business community of Savannah, we have learned, with interest, of the contemplated elevation of the Honorable Emory Speer to the bench of the Fifth Circuit Court of Appeals. During his long service as the Judge of this District the proceedings of his Court have been marked with a dignity which has commanded respect, and his firm and humane dispensation of the law has at once diminished crime and tempered its consequences to the ignorant and the lowly. His quick and clear apprehension of the intricate constitutional and commercial questions which have been constantly submitted for his adjudication, has invited the confidence of the business public, and the patriotic utterances, expressed with a singular and forceful eloquence, with which, from time to time, he has recalled to the people of this State the great principles which underlie the Republic have had an influence for good, far-reaching and permanent. With a full appreciation of the loss which this community will sustain in the removal of this distinguished jurist to other scenes of labor, we trust that this recognition of his great ability may come to him at this opportune time when he is in the fulness of his powers and of his usefulness.

Joseph D'Heed
Geo. Packard
Charles G. Bell
W.G. Barnwell
F.F. Davis
W.H. Pitt

James Bryan
J.J. Gale
Wm W. Gordon
John Hanney
Henry D. Stevens
Robt M. McDowell
Edwd D. Swell
W. E. Sealard



John re. Egan	Luisner Hard Ware Co
Geo V. Dunn	J. & Palms
Raphael J. Summer	Henry Doloway
Wm J. Thompson	A. P. Johnson
W. D. Sims (inst. g.)	A. Gordon Cossell
Ino J. Granham	Cloud Center
<u>J. Lippert</u>	Hoffman Del & Woods
<u>M. Lippert</u>	M. G. Hermann & Son
<u>M. Jeffka</u>	Frankey See
C. F. Law	Smith Bros
C. C. Schley M.D.	A. E. Smith
<u>A. S. Hardee</u>	Kavanaugh & Co
<u>J. Ditchard</u>	J. F. Brooks
O. Watson	Geo W. Giedeman
William L. Hayson	Henry E. Neeser
<u>J. P. Johnson</u>	Weston
<u>McAllister & Sons Co</u>	J. M. Knobell
Hub. Clothing Co	Knobell & Miller
Emal Lovell & Sons	Z. V. Daynes
Lindsay Morgan	E. T. C. Daynes
<u>Clayton P. Miller</u>	Fay & Beckstein

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 A. & Moyneux
W. G. Monell
 Paul Sept. Lehman
Geo. F. Trumbull
C. S. Dugoton
J. H. D. S.
W. G. Hopkins
E. H. Mercer
Castleywood
O. H. Lynch
J. J. Purse
Alg. Lyman
Edw. K. Denicie
Alg. Greenard
J. P. W. Morris
C. R. Woods
E. Cutts
C. M. Gardner
Asst. Trennan
Arthur W. Attn
O. F. McLaughlin
Julian Schley
Geo. M. Dryden
G. - L. Freeman

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J. C. Newcomb
J. J. Murphy
C. P. Malone
J. H. Malone
Philip L. Laffin
J. Morrison
C. E. Hart
Alonzo Hyatt
J. H. Myers
Bright Hunter
Lm Le Hardy
F. C. Weber
M. J. King
M. M. Hopkins
Burnel Gordon
J. E. Richardson
Daniel W. Miller
H. Smart
Edward S. Abbot
C. S. Delaney
S. C. Douglas

W. Lane
 William Rogers
 J. Lloyd Owen
 S. M. C. Jr.
 R. M. Hull
 G. A. Gordon
 James Burdick
D. Fitzgerald
C. S. Ellis
J. C. Harris
Wm. Williamson
F. D. Tinsley
W. J. Kirby
J. M. Hartshorne
See Roy Young
H. A. Nichols
Allan Bond
G. G. Godden
L. M. Endicott
Sal H. Bacon
John J. Gandy
W. W. Whitney
Thos. D. Kling
W. A. Risner

Inaugurating
O. R. Sherman
W. L. Williams
W. U. Davis
F. G. Lester
Horace A. Tracy
G. Schoach
Cecil Gabbee
J. F. Minis
J. Scott
Walter Conay
Albert G. Sheddman
D. A. Myrick
A. R. Chenevill
E. B. Compton
J. D. Taylor
John. D. Paige.
John L. Carson
J. G. Grainger
G. J. Robinson
S. J. Davis
O. Lyman

W. E. Vetsburg
 C. W. Fred
 M. J. Glashan
 L. Mohr & Son
 Daniel Hogan
 Isidore Goldfarb
 Belsinger & Co
Byers Bros.
Henry H. Livingston
Isaac N. Frank.
 Moore & Co
 A. P. Moore
 B. H. Levy & Co
 Sippman Drug Co
 by Lauman Sippman Pres.
 H. H. Cushing & Sons
 Wm. Saltman
 Wm. & H. Saltman
 Minhard Schmid
 Edward & Co.
 Globe Shoe Co.
A. Vetsburg
 A. VETSBURG COMPANY.
A. Vetsburg President
 Stephen Br
 public & private

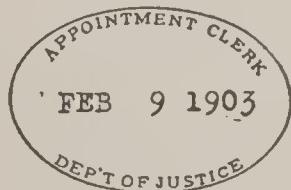
Carson & Gillelle
 D. D. Palmer
 Glenn Bros
Jos. Jackson Co
Egyptian
 H. Morris & Sons
 Monroe
 W. T. Yer and Brunson
 A. Nichols
H. Masterson
D. W. Lawrence
 SOLOMONS COMPANY
L. U. Solomon
Vice President & Mgr
 R. H. Cornwell
 FALK CLOTHING CO
 W. Falkow
 Remond & Storck
 Jos. Rosenthal & Sons
 McElroy & Mansford
 Gustave Leesstein & Sons
 J. S. Garkow
 M. Lyons & Co.
 Aldrich Wyllie
 Jacob T. Collins
 Yannaus & Sonnenfeld
 W. J. Wien

John S. James
 M.S. Byck.
 Mutual Fertilizer Co.
 Charles E. Miller Put
 M' Lough B. Ballantyne
 Fred W. Cleatke
 H. William Bros
 Prairie Pebble Phosphate Co
Dentzel
Geo. P. Walker
 Coney & Morris
 John Morris
 Oscar S. Klemm
 David S. Miller
 M. Herst, Just & Co
A. Webb
D. Guckenheimer
W. H. Koenig
Geo. S. James

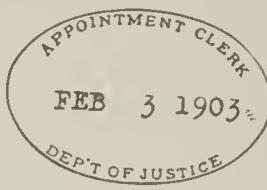
Virginia Carolina Chemical Co
G. W. Ward Jr.
 James Sheldon
 C. H. Doree
 John G. Butler
 H. McMillan
J. Sturtevant
Strachan & Co
W. W. Wells M.D.
W. J. Dailey & Chaplin
Chas. D. Duell
 THE ANTIQUE TRADE CO.,
 UNION TRANSFER CO.
J. L. Christian PRES.

COHEN KULMAN CARRIAGE & WAGON CO.

J. Kulman



Judge Speer begs also to respectfully invite the attention of the Committee to the *fac similes* of testimonials from the Bar of Augusta, the Chambers of Commerce of Atlanta and Macon, and particularly to those of other representative bodies, and many distinguished Americans.



Mr. President:-

The undersigned members of the Augusta Bar present for your consideration, in the event of the retirement of Judge McCormick, the name of Honorable Emory Speer, the present Judge of the United States Court for the Southern District of Georgia, to fill the vacancy on the Circuit Court of Appeals.

We desire to bear testimony to Judge Speer's great learning, scholarship and distinguished ability. As a Judge, his greatest characteristic is perhaps his love for substantial Justice and Equity. It is a common saying among the profession in the Southern District of Georgia that no innocent man is ever convicted in his Courts and the guilty rarely escape. The lawyer with a meritorious cause does not hesitate to enter his Courts. While those with bad causes are usually wise to avoid them.

The discipline and decorum uniformly maintained by Judge Speer in his Courts has done much to establish the dignity and respect for the Courts and the majesty of the Law in this District.

His appointment to the Circuit Court of Appeals will bring to this Court the ripe scholarship, great learning and eminent ability of one of the ablest jurists of the South, and would be a deserved promotion.

In the event of a vacancy, we respectfully ask that Judge Speer be appointed to the Circuit Court of Appeals.

<u>Jed. Pugnoed</u>	<u>E. Hallaway</u>
	<u>Frank J. Miller</u>
<u>Henry C. Hammond</u>	<u>Henry Chen</u>
<u>W^m E. Jackson</u>	<u>Samuel A. Mott</u>
<u>David B. Blackman</u>	
<u>M. Carroll</u>	<u>John</u>
<u>Al. Deubier</u>	<u>Frank H. Myers</u>
<u>Julian J. Zochy</u>	<u>Bryson Coone</u>
<u>J. V. Prequet</u>	<u>W. K. Miller</u>
<u>P. C. O'Gorman</u>	<u>Frank J. Malone</u>
<u>S. G. Fogarty</u>	<u>Hamilton Phiney</u>
<u>Eugene L. Johnson</u>	<u>Marion Reynolds</u>
<u>Fred. Lockhart</u>	<u>Tom Alexander</u>
<u>B. B. McCowan</u>	<u>Henry Croney</u>
<u>J. W. Cuper</u>	<u>Oswell R. Inn</u>
<u>Bryan Cumming</u>	<u>Chas. P. Murphy</u>
<u>G. McBrasher</u>	<u>Berry Elton</u>
<u>W. J. Bartlett</u>	<u>Wallace D. Pierce</u>
<u>Roykin Wright</u>	<u>Jos. B. Cumming</u>
<u>Austin Branch</u>	<u>Henry S. Jones</u>
	<u>Sam. B. Bradleghorn</u>
	<u>Geo. R. Coffin</u>
	<u>Frank Grinnell</u>

Augusta, Georgia, January 26, 1903.

Hon. Theodore Roosevelt,
President United States,
Washington, D. C.

Mr. President:-



The friends of Honorable Emory Speer of Georgia are very desirous of having him promoted to the Circuit bench, and we take the liberty of assuring you that if within your wisdom you should give him this appointment it will meet the unqualified wishes and desires of the business men, bankers and manufacturers of this city and community.

We have known Judge Speer personally for many years. He is a man of unquestioned ability, absolute fairness and impartiality, and has always undertaken to conserve the interests and rights of persons and property when they have been committed to his care.

Respectfully,

J. G. Chapman
President & Treasurer,
Graniteville Mfg. Co.

John Smith
Georgia Railroad Bank,
AUGUSTA, GA.

Richard Tammahie
= *Eugene F. Verderey*
President So. Mfg. Assn.
W. B. Young President
National Exchange Bank of Augusta

The Augusta Savings Bank.

J. G. Steele Cashier
NATIONAL EXCHANGE BANK OF AUGUSTA

John E. May Cashier
Jacob H. Livingston Mayor
City of Augusta

John G. Kelly Broker
James H. Jackson
Post and Telegraph Co.

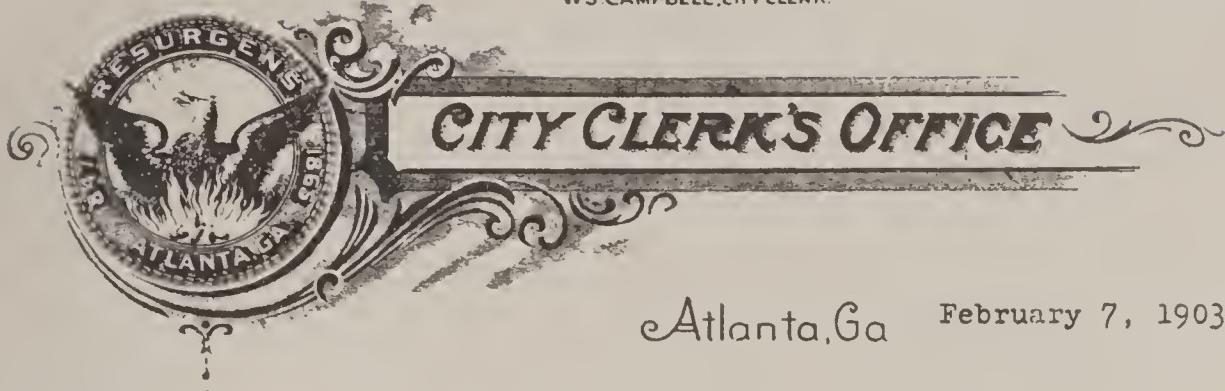
521 - *James H. Jackson*
Eckavannah Manager Albion Hotel

J. D. Dougherty
H. J. Foster, Merchant
R. P. Dunn
J. C. Williams
Carter Steevey
G. W. Lusk
W. L. Barnes
Frank G. Tolson
Nat Bank of Augusta
The Planters Loan & Savings Bank.

By Chas. C. Howard Esq.
James Barret Jr
President & Director
Langley & Aiken Mfg. Co.
Eugene F. Verderey
Post Warren Manager

EVAN P HOWELL, MAYOR
W J CAMPBELL, CITY CLERK.

DEPUTIES
J P FOSTER
C E ADAMS



Atlanta, Ga February 7, 1903.

To the President,

Washington, D. C.

Sir;

I have the honor to transmit you herewith a copy of a resolution adopted by the Mayor and General Council of the City of Atlanta, Georgia, in regard to the appointment of Judge Emory Speer as Justice of the Circuit Court of Appeals of the United States.

I have the honor to be

Yours truly,

Clerk of Council.

Council Chamber, Atlanta, Ga., Feb. 2, 1903.

By Councilman Winn:

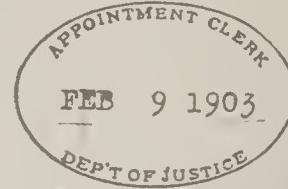
Whereas it is probable that a vacancy will soon occur on the Circuit Court bench by the resignation of Judge McCormick of the Circuit Court of Appeals of the United States, and

Whereas the name of that able Georgia Jurist, Judge Emory Speer, has been prominently mentioned in connection with the position, - the distinguished judge of our immediate district being understood as not desiring his own name considered in connection with the vacancy, -

Now, therefore, be it resolved that although Atlanta is not within the immediate jurisdiction over which Judge Speer has presided for so long, administering justice with impartial wisdom, the Council and citizens of Atlanta recognize his eminent fitness for the position and feel that his appointment as Justice of the United States Circuit Court of Appeals would be a deserved honor to an able and distinguished citizen of Georgia, in the appreciation of which the citizens of Atlanta would share in common with the citizens of the entire State of Georgia.

Resolved further that a copy of these resolutions be forwarded to the President of the United States as a request for the appointment of the eminent Georgian, whose ability, wisdom and experience qualify him in every way to worthily discharge the duties of the office of Justice of the Circuit Court of Appeals of the United States.

Georgia, Fulton County,
City of Atlanta.



I, W. J. Campbell, Clerk of Council of the City of Atlanta, do hereby certify that the above is a true copy of a resolution adopted by the General Council of the City of Atlanta on February 2, 1903 and approved by the Mayor on February 6, 1903, the original of which is of record and on file in my said office. This February 7, 1903.

Done with my hand and official seal.

Clerk of Council.

To the President:

I have the honor to transmit to you the following copy of preamble and resolutions unanimously adopted at the regular meeting of the Mayor and Council of the City of Macon, held January 27th, 1903.

With great respect,

Clerk of Council.

WHEREAS, we note that the name of our distinguished fellow citizen, Judge Emory Speer, has been prominently mentioned in connection with the vacancy on the Circuit Court Bench, caused by the resignation of Judge McCormick,

BE IT RESOLVED, by the Mayor and Council of the City of Macon, that we point with pride and pleasure to his long record of usefulness as District Judge of the Federal Court; to his eloquent and patriotic charges to the Federal Jurors, thus creating and cementing in the minds and hearts of our people a greater pride and larger love for our common country, and its wonderful system of free government; To the fairness which has marked the administration of justice in his Courts, causing it to be said of him by one of Georgia's foremost sons, "that no innocent man was ever punished, however humble, and no guilty man was ever permitted to go unwhipped of justice, however prominent."

RESOLVED FURTHER, That a copy of these resolutions be forwarded to the President of the United States, urging upon him the appointment of this distinguished son of Georgia, who is so eminently well qualified to fill the high and important office of Circuit Judge.

Macon, Ga., January 27th, 1903.

OFFICERS
 E. L. MARTIN, PRESIDENT
 A. C. FELTON, JR., 1ST VICE-PRESIDENT
 R. J. TAYLOR, 2ND VICE-PRESIDENT
 S. S. POPPER, TREASURER
 EUGENE ANDERSON, SECRETARY

DIRECTORS
 I. B. ENGLISH H. M. SMITH
 GEORGE A. SMITH HENRY HORNE
 A. E. CHAPPELL L. S. DURE
 R. C. HAZLEHURST B. L. JONES
 ABE LESSER

CHAMBER OF COMMERCE

MACON, GEORGIA.

February 7th, 1903.

To His Excellency Theodore Roosevelt,
 President of the United States,
 Washington, D.C.

Sir:-

At a very large and enthusiastic meeting of the Chamber of Commerce which comprises the representative business men of the community, the inclosed resolutions were unanimously adopted, and I, as secretary, was instructed to forward them to you at once and request your kindly consideration of them.

Yours very truly,

Eugene Anderson, Secy.

OFFICERS.
 E. L. MARTIN, PRESIDENT.
 A. C. FELTON, JR., 1ST VICE-PRESIDENT.
 R. J. TAYLOR, 2ND VICE-PRESIDENT.
 S. S. POPPER, TREASURER.
 EUGENE ANDERSON, SECRETARY.

CHAMBER OF COMMERCE

MACON, GEORGIA.

DIRECTORS.
 I. B. ENGLISH. H. M. SMITH
 GEORGE A. SMITH. HENRY HORNE
 A. E. CHAPPELL. L. S. DURE.
 R. C. HAZLEHURST. B. L. JONES.
 ABE LESSER.

Resolutions introduced by J.W. Cabaniss.

"Whereas, it is believed that there will soon be a vacancy in the office of Judge of the Circuit Court of the United States for the Fifth Circuit caused by the retirement of Hon. A. P. McCormick; therefore, be it.

"Resolved by the Chamber of Commerce of Macon, Ga., that we respectfully commend to the president for appointment to such vacancy the Honorable Emory Speer, who has won the perfect confidence of the people of this section by the faithful and forcible discharge of his duty as judge of the District Court of the United States for the Southern District of Georgia, and who has won the admiration of the people by his high character and brilliant career as a public-spirited citizen;"

"Resolved further, that it is the sense of this body that by virtue of his native ability, his scholarly attainments and his successful experience as a lawyer and a judge, he is pre-eminently fitted for the office; and by reason of his wide reputation as a distinguished jurist and a patriotic citizen, his appointment would give entire satisfaction to the public at large;

"Resolved further, that the secretary forthwith transmit to his Excellency, Theodore Roosevelt, President of the United States a copy of these resolutions."

OFFICERS

L MARTIN, PRESIDENT
 A C FELTON JR 1ST VICE-PRES.
 R J TAYLOR, 2ND VICE-PRESIDENT
 S S POPPER TREASURER
 EUGENE ANDERSON, SECRETARY

CHAMBER OF COMMERCE

MACON, GEORGIA.

DIRECTORS

I B ENGLISH	H M SMITH
GEORGE A SMITH	HENRY HORNE.
A E CHAPPELL	L S DURE
P C HAZLEHURST	B L JONES.
ABE LESSER	

Resolutions introduced by H.T. Powell.

"Resolved by the Chamber of Commerce of Macon, Ga., that the president be respectfully urged to appoint the Honorable Marion Erwin to fill the vacancy in the District Court judgeship that may be caused by such promotion of Judge Speer.

"Resolved further that Mr. Erwin by his services as United States attorney for this District has shown himself to be a lawyer of the highest order of integrity, ability and learning, and by his career as a citizen has won the utmost confidence and esteem of the people of this district.

"Resolved further, that by his experience as United States attorney and through his familiarity with the federal law and procedure acquired in a varied and successful law practice he is eminently qualified to fill the office of United States judge.

"Resolved further, that it is the sense of this body that the affairs of the office of the United States attorney for this district during Mr. Erwin's incumbency have been faithfully and efficiently administered to the satisfaction of the people of this district, and that his appointment to the office of United States District Judge would give general satisfaction to the people at large.

"Resolved further that a copy of these resolutions be furnished for presentation at the proper time to His Excellency, Theodore Roosevelt, President of the United States."

LANE & PARK,
ATTORNEYS AT LAW
ROOMS 8, 9, 10 AND 11,
AMERICAN NATIONAL BANK BUILDING.
MACON, GA.

ANDREW W. LANE
ORVILLE A. PARK

Macon, Ga., Jan. 29, 1903.

His Excellency, Theodore Roosevelt,
Washington, D. C.

Mr. President:-

I have the honor to present herewith a duly certified copy of the resolutions that were unanimously passed by the Bar Association of the City of Macon, in meeting assembled, on January 28th, 1903, endorsing Judge Emory Speer, for the position of United States Circuit Judge for the Fifth Circuit. As Secretary I was instructed to forward to your Excellency a copy of these resolutions, and it gives me great pleasure to hand you the same herewith.

With great respect, I am, sir,

Very sincerely yours,

Andrew W. Lane
Secretary.

Be it resolved by the Macon Bar, in meeting assembled, as follows:

We heartily recommend Judge Emory Speer for appointment to the office of United States Circuit Judge for the Fifth Circuit, on the voluntary retirement of Judge Andrew P. McCormick.

The distinguished and useful career of Judge Speer as United States District Judge, and his high character, broad patriotism, intellectual strength and scholarly attainments, mark him as a man eminently worthy to be promoted to higher honors and a wider field for usefulness in the Federal Judiciary. He has presided over the Courts of this District with commendable dignity and courtesy, and has administered the law with firmness without severity. Intensely loyal himself to our common country and devoted to the people of his native state, he has imbued the people of his District with a high respect for the laws and Courts of the United States and of the State of Georgia.

In his public addresses, he has shown himself to be a man of learning and ability, profound in thought and sincere in patriotism.

As Dean of the Mercer University Law School, he has contributed largely to the elevation of the standard of professional excellence, as well as reflected honor upon himself. Of his lectures on the Constitution the late Edward J. Phelps, of Vermont, has written "The lectures are the best introduction I have ever seen to the study of the Constitution of the United States. They compress a great deal into a small compass, with an eloquence and lucidity of style that make them fascinating as well as instructive."

As a Citizen and Judge, we believe Honorable Emory Speer to be worthy and deserving of appointment to a seat on the United States Circuit Court Bench, and we request the President and Secretary of the Macon Bar Association to forward a certificate of these resolutions to the President of the United States as our petition

that he be so appointed, and our testimony in support thereof.

(Signed) Andrew W. Lane,

Secretary.

I, Andrew W. Lane, Secretary of the Bar Association of the City of Macon, do hereby certify that the above and foregoing is a true and correct copy of a resolution unanimously passed by the Bar Association of the City of Macon, in meeting assembled, on the 28th day of January, 1903.

WITNESS my official signature this the 29th day of January, 1903.



Andrew W. Lane
Secretary Bar Association
City of Macon.



MERCER UNIVERSITY,
P. D. POLLOCK, PRESIDENT

MACON, GA., Jan. 29, 1902

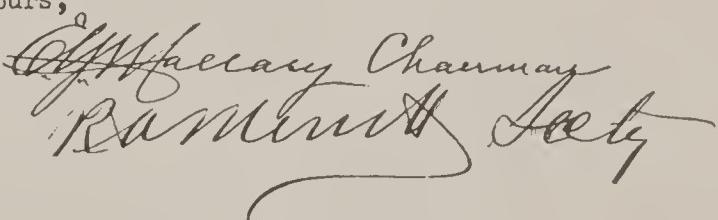
To His Excellency, Theodore Roosevelt, Pres. of U. S.,
Washington, D. C.

My Dear Sir:-

We beg to transmit the enclosed preamble and resolutions concerning the character, work, and fitness of Judge Emory Speer.

We should greatly appreciate any recognition of the distinguished services of Judge Speer.

Very truly yours,



Andrew W. Lane
Bar Association

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MERCER UNIVERSITY.
P. D. POLLOCK, PRESIDENT.

MACON, GA.,

January 30-1903.

Whereas, Having seen in the daily press frequent mention of the name of Judge Emory Speer, a distinguished citizen of our city, in connection with the Circuit Court of Appeals, as a successor to Judge McCormick, and—

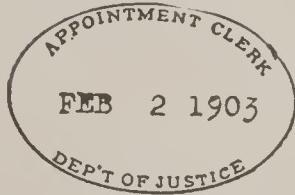
Whereas, Judge Emory Speer, for the love he bears to the cause of legal learning has been the Dean of the Law Faculty of Mercer University for a number of years, giving generously of the spare moments of a busy legal career, to the instruction of hundreds of young men in the interpretation of the Federal Constitution, and—

Whereas, This service has been done in such a high minded and patriotic way as to be of great value to the young men who have been under his tuition, and has also been of great value to Mercer University.

Therefore be it resolved by the Prudential Committee of Mercer University, that we wish to give public testimony to the value of his services as Dean of the law department of Mercer University, and we wish also to join the great mass of our fellow citizens in rendering testimony as to his distinguished ability as a Judge—and as an Orator, Scholar, and jurist.

*Prudential Committee of Mercer University
acting for Trustees.*

*H. W. Fairbanks Chairman
Hawthorne Society
C. P. Birmingham
J. H. Cabaniss*



MACON, Bibb County, GEORGIA.

January 15th, 1903.

To the President,

Washington, D. C.



On January 1st, 1903, the Emancipation Association of this the home county of Judge Emory Speer, while celebrating the birth-day of freedom, unanimously and enthusiastically passed the following preamble and resolutions:

Whereas, in his great speech at Buffalo, New York, before the Independent Club, on the 19th day of December, 1902, Judge Emory Speer of our City gave utterance to sentiments for the weal of all of our people, and especially for the colored race, that have attracted the attention of the entire country.

Therefore, Be It Resolved, that the Emancipation Association of Bibb County tender thanks to Judge Speer for his advocacy of the enactment of impartial laws for white and black alike, which will admit to the franchise the intelligent of both races, and exclude the ignorant and worthless.

Resolved, Second, That the above sentiment of the great orator is akin to that fairness which has ever been given to the unfortunate of our race when arraigned in Judge Speer's court.

Resolved, Third, that a committee of nine be appointed to tender in person to Judge Speer a copy of these resolutions."

Since the action of the Association, and the performance of its pleasant duty by the Committee, we have learned through the press that Judge McCormick, of the Circuit Court of Appeals may, at some early date, retire from active service.

We are so familiar with the high esteem in which Judge Emory Speer is held by all the colored people of the Southern District of Georgia, and of the entire State as well, that we take the liberty of asking, on behalf of all of our people, that in making an appointment to the Circuit Court of Appeals the record of Judge Speer for a fair and impartial administration of the laws during eighteen years, together with his eminent

(2)

fitness in every way for promotion, be given the most favorable consideration.

While expressing the sentiments of our own people especially, we are not unmindful of the fact that the learning, ability, fairness and courage of Judge Speer are the admiration of all classes of the people.

Respectfully,

*W. D. Emory - Esq. 1st Lub.
7th St. S. 2nd fl.*

President

Prof. G. D. King

Secretary

Jesse Ray

Treasurer

A. S. Beasley Daugh.

K. W. Wright

*A. H. Hendricks. Poster
clerk.*

*Rev. W. Edward Williams
Pastor First Presbyterian Church*

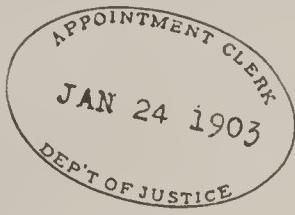
W. T. Reid Letter Carrier

*C. E. Wood &
H. A. L. Currier*

Executive Board Emancipation Association.

*W. J. Alward
Pastor, First M. E. Church.
J. R. M. L. Cain Pastor
First Congregational Church.
W. J. Johnson
Pastor of First Baptist Church
W. R. Harbo Pastor
Trinity Temple Baptist
Church.*

DEPARTMENT OF JUSTICE,
CHAMBERS OF
REFEREE IN BANKRUPTCY,
BUFFALO, N.Y.



January 21st, 1903.

My Dear Mr. President:-

It is a far cry from Georgia to New York, but, in administering the Bankruptcy Law, I have been much struck with the opinions of the Hon. Emory Speer, judge of the Southern District of Georgia. He was recently in Buffalo as the guest of the Independent Club, whose guest, as you will remember, you once were, and also of the Lawyers' Club of this city, and I learn from him that there is soon to be a vacancy in the Circuit Court of Appeals of the Fifth Circuit, and that he is a candidate for the position.

Judge Speer made a profound impression while here, and his standing as a friend of a broad interpretation of the bankruptcy law is recognized by everyone whose duty it is to administer it. That the Circuit Court of Appeals of that Circuit is not inclined to such an interpretation is something which many of us have deplored.

As one of those administers, I sincerely hope you will be able to place Judge Speer where he may assist in that broad interpretation, and I know that, in so doing, you will honor a representative of the South whom we have all but adopted in this Northern city, and who is, I know, a sincere admirer of your good self and the present administration.

Yours very sincerely,

Hon. Theodore Roosevelt, *William H. Taft*
The President,
Washington, D. C.

SMYTHE LEE & FROST,
ATTORNEYS AND COUNSELORS
7 & 9 BROAD STREET
CHARLESTON S.C.

AUGUSTINE T. SMYTHE
A. M. LEE
FRANK G. FROST

Charleston, S. C., February 6, 1903.

To the President,

Washington, D. C.

Sir:



I understand that the friends of the Honorable Emory Speer, United States District Judge for the Southern District of Georgia, have presented his name to you for the position of United States Circuit Judge for the Fifth Circuit, soon to be made vacant by the retirement of Judge McCormick.

I sincerely trust that my information is correct.

Although not a member of the Georgia Bar, my professional engagements have brought me for years into intimate knowledge of many cases of importance pending before Judge Speer, and I have had the pleasure of appearing before him and arguing matters of importance.

I therefore know Judge Speer thoroughly not only personally as a cultured gentleman, but also by reputation, and through his published decisions. He is regarded by the Bar in this section of the country as an able and learned jurist, as a lawyer of keen and quick perception, and as possessing all the qualities which make up an able, upright and hard working Judge. In this opinion I heartily concur: he will be not only an ornament, but a useful addition to the Bench of the Circuit Court of Appeals of the Fifth Circuit, should he be appointed thereto.

It gives me great pleasure therefore, and I speak, not only for myself, but for the Bar of South Carolina, most of whom know Judge Speer well, to earnestly and respectfully urge upon your Excellency his appointment to the Circuit Bench, and to express the hope that he may long be spared to fill this important position, with the credit which we know he will bring to it.

Yours respectfully

Augustine J. Smythe

LAW OFFICES OF
MOOT SPRAGUE, BROWNELL & MARCY.
 45 ERIE COUNTY SAVINGS BANK BUILDING

ADLAI E. MOOT
 HENRY W. SPRAGUE
 GEORGE F. BROWNELL
 WILLIAM L. MARCY

The President,

Washington, D. C.

My dear Mr. Roosevelt:-

Buffalo, N.Y., January 20th, 1903



Judge Emory Speer, of Macon, Ga., recently spoke in our city before the Independent Club, upon the reconstruction era and the present outlook in the South. He also spoke before the Lawyers' Club upon the Federal Extradition Law as compared with the State Extradition.

I was present on each occasion, and had the advantage of hearing him, and of making his personal acquaintance. The impression of Judge Speer which I had formed from reading his opinions and addresses heretofore, was more than confirmed by listening to him upon the great topics considered by him in these addresses. I am fully persuaded that he is a patriot in the highest sense of the word, and that he is a lawyer and judge of character, integrity, learning and ability quite above the ordinary range of lawyers and judges.

I learn that he is being urged for the vacancy in the Circuit Court of Appeals in the Fifth Circuit, and I take the liberty of suggesting that if you appoint him to fill this vacancy you will make another appointment that will commend you to all good people in the South, in fact, all good people everywhere, precisely as your appointment of Governor Jones of Alabama has already won warm commendation from the Bar and the people. You should always promote judges like Judge Speer, where that is possible, precisely as you are promoting Judge Day.

Very respectfully yours,

Adlai E. Moot

JOHN SKELETON WILLIAMS,
President.

SEABOARD AIR LINE SYSTEM,
Office of the President.

RICHMOND OFFICE, No. 922 E. MAIN ST
NEW YORK OFFICE, No. 16 WALL ST

New York, January 30, 1903.

To the President of the United States,
Executive Mansion,
Washington.

I am informed that the name of Judge Emory Speer, of Georgia, has been suggested for a vacancy on the Circuit Court of Appeals, Fifth Circuit, caused by the retirement of Judge A. P. McCormick. As the representative of large interests in several States of the South, I have had opportunity to learn much of Judge Speer's ability and conduct as a judge and of his standing as a citizen.

I am satisfied that his appointment would be highly acceptable to conservative and thinking people, of both parties, of this entire section.

He is one of the most brilliant lawyers of the Georgia Bar, and has made a very strong and conspicuously fair judge.

Very respectfully,



State of Georgia,
Executive Office,
Atlanta.

January 26, 1903.

To the President:

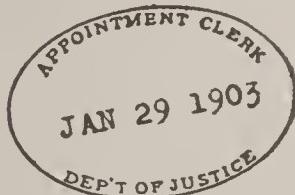
It gives me great pleasure to add my indorsement to the suggestion of Judge Emory Speer for the vacancy on the Circuit Court of Appeals which will be occasioned by the retirement of Judge McCormick. Judge Speer is pre-eminently qualified for this position, and his appointment would be gratifying to the bar and the people generally of this State.

For ten years I occupied the position of Attorney-General of Georgia, and during that time had many important cases before Judge Speer as U. S. Judge for the Southern District of Georgia, which gave me ample opportunity to recognize his eminent ability for judicial station, and for that reason I unhesitatingly recommend his promotion.

Very respectfully,

J. T. Tressell
J. T. Tressell
Attn. of Ga.

State of Georgia.
Attorney General's Office.
Atlanta.
John C. Hart, Atty. Genl.



February 2nd, 1903.

Mr. President:-

With thousands of other true and loyal citizens of Georgia I commend to your favorable consideration the promotion of Judge Emory Speer to the Judgeship of the Circuit Court of Appeals. His qualifications as Judge, and his character as a man, imminently fit him to fill the high position.

Respectfully,

J. C. Hart

Attorney General.

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Augusta, Ga., February 2nd, 1903.

State of Georgia,
Attorney-General's Office,
Atlanta.

~~Wright~~ H. W. Wright, Atty Gen'l

TO THE PRESIDENT OF THE UNITED STATES,

Washington, D. C.

Mr. President:-

I have intimately known the Honorable Emory Speer and his forebears from my boyhood. As a member of the Bar and active practitioner in Judge Speer's district I have known him as a man and Judge since his appointment to the Judgeship.

In the interest of the public service, therefore, I beg respectfully to add my endorsement of his high qualification and fitness for promotion to the Judgeship of the Circuit Court of Appeals for the Fifth Circuit.

Judge Speer's broad culture and profound learning in addition to his unusual attainments as Lawyer and Judge, mark him as preeminently fit for this high station.

Although his family in this and past generations has contributed to the public service of this State many illustrious sons, none of them has added greater lustre to the name and to the public service of the Commonwealth than has this later representative of that honored Georgia family.

Though a faithful and loyal Republican when nearly all his personal and family friends and associates are Democrats he nevertheless retains their respect and affection. As one of the latter I feel authorized to say that his appointment would meet with universal favor at the hands of the Bar and people of the State. Even were the appointing power to take into consideration Democrats as well as Republicans Judge Speer would on his own merits still stand in the forefront of the Eligibles in the entire Fifth Circuit.

I have the honor to be,

Respectfully,

H. W. Wright
(Atty. General of Georgia)



Aiken S.C. Jan 23rd 1903.

Sir: I have the honor and real pleasure, to recommend to you the appointment of the Hon. Emory Spur, of Macon Ga. to the office of Judge of the Circuit Court of Appeals, Fifth Circuit.

I have known

Judge Spur ever since he was an able and brave Member of Congress, several years since.

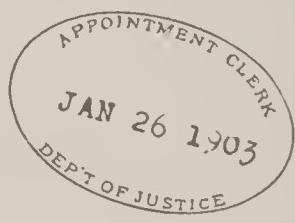
I have had professional reasons to know that his career as a judge has been learned, industrious, impartial and wise.

He has always shown the courage of his convictions and has been, I think, the type of one who in this somewhat difficult part of the country has administered justice without fear or favor, and has made

everybody equal before the law.
 Yours knowing & believing
 I gladly add my testimonial to
 that of his friends in the circuit
 to which he belongs.

Very respectfully
 Your obedient servant
 Geo. F. Edmunds

The President
 Washington D.C.





FORM 87.

LOUISVILLE PUBLIC SCHOOLS.

Louisville, Ky Jan 26th 1903:

Theodore Roosevelt, President
Dear Sir.

I have learned that Judge Emory Speer of Georgia has been or is to be recommended to you for promotion to a vacancy soon to occur in the 5th U.S. Circuit

I write to speak of his merits as a man, leaving it to men in his profession to speak of his work as a judge. I knew him as a boy. When we were falling back before Sherman's columns on the Macon road in 1864 a young fellow anxious to do something "to repel the invader" joined us. He was then not quite sixteen years old. This youngster, who preferred to join a veteran command rather than Jo Brown's militia, was the present Judge. He was enrolled as a member of my company and three days after at Griswoldville he had his "baptism of fire."

He remained with us to the close although we tendered him a discharge after the fall of Savannah. He was paroled at Washington Ga. in May 1865 along with Gen.

(35)

Form 97.

LOUISVILLE PUBLIC SCHOOLS.

Louisville, Ky. —————— 190

to Lewis's Brigade and like the rest of us
has remained loyal to his country and
his flag.

It has occurred to me that such testimony
as I could offer to his faithfulness as
a soldier, would be a recommendation
to you as a Circuit Judge. As I watched
his demeanor in camp, and on the march,
and in line of battle I came to admire
the manly little fellow I saw in the fu-
ture a bright career for him, and have
been gratified at his success so far.

I trust you may see your way clear
to call him to higher duties and re-
sponsibilities: he will not disappoint you.

Respectfully,

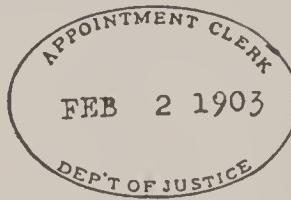
J. T. Gaines, Pupil.
Public School.
and former Captain in C.S.A.

I have taken the liberty of asking our Gen-
eral, himself a distinguished judge, and others
. of our officers to write you also.

Georgetown Ky Jan'y 30 1903

To

The President of U States
Washington



Learning that James Emory Speer at present Judge of the United States District Court of Georgia is an applicant for appointment as Judge of the U S Circuit Court, and informed that possibly my testimony of his much worthiness to him I hereby truly and conscientiously give it.

I knew him as a private volunteer soldier of the Confederate Army belonging to the Kentucky Brigade of Infantry which I commanded, and since then have known him only through the public prints as a statesman and jurist. And from what I personally know & hear there hence far assure his appointment would be useful to the public and states favoring to all well-wishers of the Republic.

Respectfully
Jas H. Lewis

John E. Hardridge,
Attorney and Counsellor at Law.
Jacksonville, Florida.
Royal-Appelby Building.

February 2, 1903.

Hon. Theodore Roosevelt,
Washington, D.C.



Dear Sir:-

The name of Honorable Emory Speer, United States Judge for the Southern District of Georgia, has been presented by his friends for promotion to the Circuit Court of Appeals for the Fifth Circuit, under the notion that there would be a vacancy shortly through the voluntary retirement of Judge McCormick, by reason of his having reached the age limit provided by statute.

A long and intimate acquaintance with Judge Speer, commencing with his graduation and extending down to the present time, permits me to testify to his sterling worth, with a warrant of assertion possessed only by those who have had the good fortune to know him closely.

Judge Speer's life has been vigorous, manly and open. He has always stood for fair dealing, for justice, and for truth. The courage to do his duty under all circumstances, regardless of the favor or frown that such a course might bring, has ever been with and of him. Neither personal danger, nor physical discomfort, nor the criticism of men, nor the threatened ostracism from the social life to which he was born, has ever served to deter him for a moment or to deflect his course a hairbreadth from the line of action that his sense of duty

Hon.T.R., # 2.

depicted. More than that of most men, and to a degree as great as any other man of my acquaintance, has his action in life been beyond the influence of place, self or cajolery. He has outlived the storm that broke over him in his younger years because he dared to do what he conceived to be right, to be taken to the hearts of many who, in days gone by, had pursued him with all of the bitterness that belongs to keen and relentless partisan politics.

Few men are so bountifully endowed with all of the qualifications that contribute to the formation of judicial character, as is Judge Speer.

With an alert intelligence, a richness of diction beyond his fellows, and the training of years, aided, influenced and ripened by a life of rectitude and morals, Judge Speer is preeminently fitted for the place.

It is not amiss for me to say in this connection that only twice in my life, until now, have I ever given my endorsement to any person for judicial preferment. Holding to lofty ideals as to the character, both mental and moral, necessary to equip one for the judiciary, I have been cautious at all times, to a degree, in my personal action, where appointment to the Bench was concerned. It is, however, that very caution, and my own understanding of the many requirements

Hon. T.R., # 3.

that should meet in a man to enable him to capably fill the high position of Judge of the Circuit Court of Appeals, that moves me now to endorse Judge Speer, earnestly and sincerely, as a man in all of the phases of life, mind, morals and training, qualified and able to satisfactorily discharge the duties that belong to the Appellate Court.

Respectfully,

John S. Hartedge

A. W. STALEY, C. C.
VINEVILLE
A. N. KENDRICK,
SECRETARY-TREASURER & DELEGATE
408 POPLAR STREET

MACON DIVISION, No. 123.

(M)
ORDER OF RAILWAY CONDUCTORS,
OF AMERICA.

We meet in our own building, No.
408 Poplar Street, on First and
Third Sundays, at 2 p.m.

E. F. RISER TRUSTEES L. E. GRIFFIN
H. DICKINSON

MACON, GA., February 1st, 1903.

To the Members of Macon Division No 123
Order of Railway Conductors of America.

Brothers:-

Whereas having seen in the daily press frequent mention of the name of Hon Emory Speer, a distinguished citizen of our City, in connection with the Circuit Court of Appeals as a successor to Judge Alex P. McCormick and, knowing Judge Speer as a Jurist, a patriotic citizen, a man broad in his sympathies, his love of justice, his consideration for the weak and as a representative of the American people, therefore be it

Resolved by Macon Division No 123 Order of Railway Conductors of America duly assembled, That we heartily recommend Judge Emory Speer for the appointment to this Office of United States Circuit Judge on the retirement of Judge McCormick.

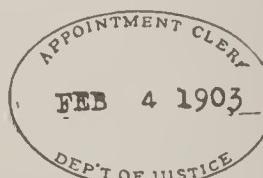
The distinguished and useful career as District Judge, and his high character, broad patriotism, intellectual strength and scholarly attainments mark him as a man eminently worthy to be promoted to higher honors and a wider field for usefulness in the Federal judiciary. He has presided over the courts of this District for many years, with commendable dignity and courtesy, and has administered the law with firmness, without severity.

As a citizen and Judge, we believe Hon Emory Speer to be worthy and deserving of appointment to a seat on the United States Circuit Court bench, and we request our Secretary and Chief Conductor to forward a copy of these resolutions to the President of the United States as our petition that he be appointed.

Unanimously adopted;

February 1st, 1903.

A. N. Kendrick Secretary,
A. M. Staley Chief Conductor.





STATE OF KENTUCKY.

ADJUTANT GENERAL'S OFFICE.

BRIG-GEN. DAVID R. MURRAY.
Adjutant General.
COL. PERCY HALY.
Assistant Adjutant General.
CAPT. ED PORTER THOMPSON.
Compiler of Confederate Records

Frankfort, Jan. 29th, 1903.

Hon. Theodore Roosevelt,
President of the United States,
Washington, D. C.

Dear Sir:

Judge Emory Speer, of the Southern District of Georgia, whose judicial record is doubtless well known to you, is an applicant for promotion to be United States Circuit Court Judge--a vacancy having been created by the appointment of the Hon. Wm. R. Day to the Supreme Bench..

I hope it will not be regarded as presumptuous in me to ask a favorable consideration of his claims. His relations to a great body of Kentuckians are such that his appointment would be to them exceedingly gratifying. Though a Georgian he was a member of our famous Orphan Brigade and proved himself a gallant boy; since which time Kentuckians have felt for him the peculiar tie of comradeship, and have been proud of him because of his sterling worth as a man, and his honorable record in Congress, at the bar, and on the bench of his native State; and any favor the President can extend to him, consistent with public interests, will be gratefully remembered by them.

With assurance of the highest esteem,

Yours truly,

E. P. Thompson.



W A BLOUNT. A C BLOUNT, JR.
 BLOUNT & BLOUNT,
 Attorneys and Counsellors at Law.
 PENSACOLA, FLA.

Jan. 28, 1903

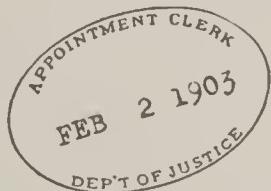
To the President,
 Washington, D. C.

Dear Sir:

I understand that the name of Judge Emory Speer of Georgia has been presented to you for appointment to the Circuit Court of Appeals of the Fifth Judicial Circuit, vice Judge A. P. McCormick, who intends to retire. I am glad to be able to add my endorsement of Judge Speer to the endorsement which I know that he has received from the lawyers throughout the circuit. His record upon the bench has been such as to justify me in the belief that no better appointment could be made in the circuit than an appointment of him, and that if he be appointed, the interests of all litigants which may be committed to him as a Judge of the Circuit Court of Appeals will be thoroughly, conscientiously and ably protected and conserved.

Yours very truly,

W. A. Blount



JUDGE'S CHAMBERS,
UNITED STATES DISTRICT COURT,
Northern District of Illinois,
CHICAGO.

January 27, 1903.

President Theodore Roosevelt,
Washington, D. C.

Dear Mr. President:



The friends of Judge Emory Speer of Georgia are urging him for the position of Circuit Judge, soon to become vacant, I understand, by the retirement of Judge McCormick of Texas. Georgia has no representative in the Court of Appeals, I believe, at present.

Judge Speer is one of our Galena orators, a most eloquent and loyal man. He is a Republican who is in accord with the better Southern sentiment. I have been kept supplied from time to time with his speeches, the burden of which is an earnest appeal to his Grand Juries, as well as to the Southern people, for a recognition of the supremacy of the Federal Government. I think the doctrine of the States' Rights is not quite dead down there.

I have known Judge Speer for a number of years. He is a good lawyer and judge and gentleman. He would be an ornament to the Circuit Bench, as he now is to the District Bench, and would, I'm sure, be very acceptable to the people of the Fifth Circuit.

With best of wishes for your health, and the highest of hopes for your future,

I am, sincerely yours,

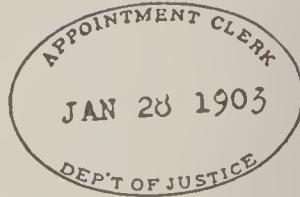
O. C. Kuhseatt.

JAMES H WILSON
1305 RODNEY STREET.
WILMINGTON, DELAWARE

Received Jan 27 1903
A.G.

To the President,
 (Through the Attorney General,)
 Washington, D. C.

January 26, 1903.



Sir:

I take great pleasure in saying I have known the Honorable Emory Speer, U. S. District Judge, at Macon, Georgia, for many years, and regard him as one of the ablest, fairest and most fearless judges in the range of my entire acquaintance. He is in every sense fit for the highest judicial position, and I trust will be promoted to the vacancy in the Circuit Court of Appeals for the Fifth Circuit, vice, Judge A. P. McCormick, retired.

I have had for many years a great interest in the region over which Judge Speer presides as District Judge. It was my good fortune to be in command of the Cavalry Corps which occupied that State at the close of the War of Secession, and thereby became acquainted with its leading people. It was also my good fortune to occupy the same region with the First Army Corps prior to its transfer to Cuba. During this time I became well acquainted with the conditions prevailing in that portion of the United States, and it gives me great satisfaction to say that Judge Speer is not only judicially but socially at the very top of the best society of Georgia. He is a gentleman of the most exemplary habits, studious in his profession, eloquent as a speaker, independent and thor-

#2

oughly American in his judgments and has the good fortune to enjoy the respect and confidence of his neighbors, without reference to condition or color. I conscientiously believe there is not a single objection to be raised against his character or eminent fitness for the judicial office now vacant.

Trusting that you will find it convenient and desirable to appoint him, I am,

Very respectfully,

Your obedient servant,

James A. Wilson

FIFTY-SEVENTH CONGRESS.
MR. PRITCHARD, CHAIRMAN.
MR. PLATT, CONN.
MR. MC COMAS.
MR. KITTREDGE
MR. MALLORY.
MR. HEITFELD.
MR. FOSTER, LA
R. H. MCNEILL, CLERK.

Mississippi United States Senate,

COMMITTEE ON PATENTS.

WASHINGTON, D. C., Feb. 2, 1903.

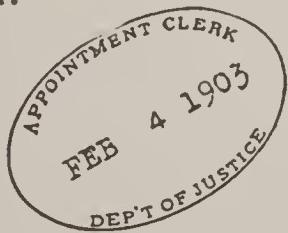
*read
2/3/03*

To the President:-

It affords me great pleasure to recommend the appointment of Hon. Emory Speer to fill the vacancy occasioned by the retirement of Judge McCormick of the Fifth Circuit. Judge Speer is eminently fitted to fill the high position to which he aspires, and I sincerely trust that you can see your way clear to appoint him.

Sincerely yours,

J. C. Pritchard



WILLIAM E. DODGE,
NEW YORK.

99 JOHN STREET.

January 22, 1903.

ac e d
1/23/1903
W.M.



To the President.

Dear Sir:

I learn with great pleasure that the name of Judge Emory Speer, of Macon, Georgia, has been suggested for the vacancy in the Circuit Court of Appeals of the Fifth Circuit, made by the retirement of Judge A. P. McCormick.

I have had occasion to know something of the ability and high character of Judge Speer, and should feel much gratified if you should see your way clear to make the nomination.

I am, with high regard,

Very sincerely yours,

The President,

Washington, D. C.

*City of Augusta, Ga.
Mayor's Office.*

January 26th, 1903.

To His Excellency,

Hon. Theodore Roosevelt,

President of the United States,

Washington, D. C.

Dear Sir:-

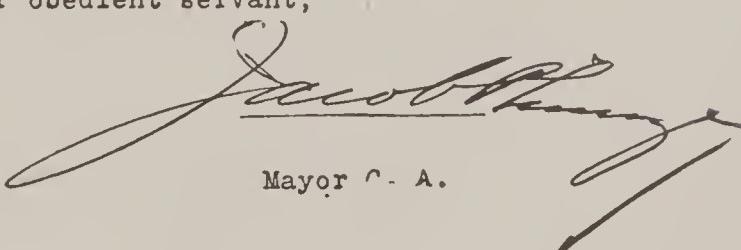
The Honorable Emory Speer, Judge of the United States District Court, located at Macon, Georgia, is a candidate for the vacancy on the Circuit Court of Appeals.

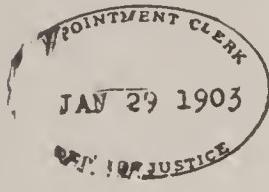
I have known Judge Speer since boyhood, and unhesitatingly and unqualifiedly recommend him for this high position that he is striving for. He is a man of pre-eminent ability, and certainly will adorn the position with great credit, not only to his State, but to the people at large. If you can see your way clear to give him this position, I have no doubt but what your action will meet with the entire approval of the people of this State.

I presume you know a great deal about the qualifications of Judge Speer for such a place, and will, therefore, not burden you with any lengthy petition asking for favorable consideration for him in your hands.

With highest esteem, I beg to remain,

Your obedient servant,


Jacob H. Thayer
Mayor C. A.



L. A. SHAVER,
SOLICITOR.



Interstate Commerce Commission,
Washington.

February 4, 1903.

TO THE PRESIDENT:

In view of the reported forthcoming retirement of Judge A. P. McCormick as one of the United States circuit judges for the fifth circuit, I take the liberty of calling your attention to Judge Emory Speer, United States District Judge for the Southern District of Georgia, as a worthy and capable successor

I have conducted a number of cases in Judge Speer's court, and while his disposition of those cases has not always been in accordance with my ex parte views as an attorney, he has been sustained by the higher courts and I have been impressed with his impartiality, his dignity combined with affability on the bench, his capacity for patient and thorough investigation and the clearness and promptness of his rulings and decisions.

I sincerely and earnestly commend him for promotion to the circuit judgeship when the vacancy shall have occurred. I believe this will both subserve the public good and be most acceptable to the bar and the public in general.

Very respectfully,

L. A. Shaver.

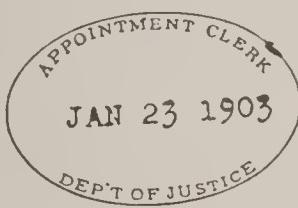


State of Georgia.
House of Representatives.

*Augusta
Atlanta, Ga. Jan 20 1903*

To the President:- Without request on his part and without the knowledge of Judge Emory Speer, I take great pleasure in assuring Your Excellency that the appointment of His Honor to the judgeship of the Circuit Court of Appeals, 5th Circuit, would be hailed by our people, without regard to party affiliation, with delight he is so courageous a man and so just a Judge.

Respectfully,
Washin V. C. alvin,
A Representative from the County of Richmond



CHARLES W. LAVERS.
Prest & Genl Mngt.

HOWARD M. VAN COURT.
Vico Pres

CHARLES L. LEWANDO,
Treasurer

HORACE G. VAN COURT,
Secretary

The Shoe & Leather Merchantile Agency,

INCORPORATED.

Capital paid in - \$200,000.

Executive Offices

183 Essex Street, Boston, Mass.

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MARINER & MERCHANT BLDG.
3RD & CHESTNUT STS., PHILADELPHIA, PA.
320 BROADWAY, NEW YORK, N.Y.
147 FIFTH AVE., CHICAGO.

Boston, Jan. 30, 1903.

To His Excellency Theodore Roosevelt
President of the United States
Executive Mansion
Washington, D. C.

Sir:-

We take the liberty of writing to you in reference to the appointment of a Judge to the Circuit Court of Appeals of the Fifth Circuit, to fill the vacancy caused by the resignation of one of that Court. It has been our good fortune to have personal knowledge of the able, consistent, and impartial service which Judge Emery Spear, of Macon, Ga., has rendered during his service on the bench, and we most earnestly plead for his appointment to the vacancy spoken of, feeling, as we do, that the Bankruptcy Law will be administered, as far as he is concerned, in a most careful and efficient manner.

Representing, as we do, the shoe and leather interests of the country, which involves our representing clients in every district in the land, we feel that our appeal to you will no doubt receive due consideration.

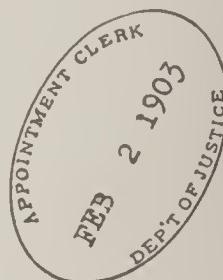
We have the honor to be

Most respectfully,

Your obedient servants,

Dictated
N.

95-



FRANK IRVINE.
CORNELL UNIVERSITY COLLEGE OF LAW.
ITHACA, N. Y.

January 29, 1903.

To the President of the United States,
Washington, D. C.

Mr. President:-

Permit me to add my name to those who recommend the appointment of Hon. Emory Speer of Georgia to the office of Circuit Judge for the Fifth Circuit.

Judge Speer has served his country so long and so well in Congress and as District Judge that it is needless to offer testimony as to his great ability and his sound patriotism. His opinions add lustre to the reports of the Federal Courts, and his whole career has been marked by a manly, courageous and able advocacy of broad National ideas, most effective in obliterating the sectional prejudices and bitterness which in his earlier years threatened the progress of the Nation.

While I have not the honor of Judge Speer's personal acquaintance I have such admiration for his qualities as a man and a judge that I venture the hope that his field of usefulness may be broadened by this appointment.

Very respectfully,

Frank Irvine.



Jan'y. 28th 1903
MELROSE PLANTATION,
THOMASVILLE, GEORGIA

My dear Mr. President.

I am glad of the opportunity
that presents itself, by the
retirement of Judge McCormick
of the Circuit Court of Appeals,
for the Fifth Circuit, to most
earnestly commend to your
consideration, my friend,
Judge Emory Speer, of
Georgia. To most ably fill
the vacancy.

As a jurist, as an upright
manly man, fearless, just

and true, Judge Speer
stands in the front rank
of such Citizenship of
our Country.

No service which a
President is called upon
to perform for his Country,
demands the Care, and
Consideration, as the
selection of men to uphold,
and interpret, the laws
of the land.

Judge Speer would not fail
to add merit honor and
dignity, to the highest

place in our Judiciary.

Very sincerely yours

H. M. Hartman.

To the President.

Theodore Roosevelt

Washington D.C.

The Outlook Company
287 Fourth Avenue
New York



February 5, 1903.

My dear Mr. Roosevelt:

Judge Emory Speer writes me a note which I venture to enclose, and in compliance with which I am writing this letter to you.

Of Mr. Speer's judicial qualifications I have no real knowledge, nor should I think myself sufficient legal expert to offer any opinion on that subject. But I have had occasion to know something of his general influence in Georgia. I have read and in the Outlook commented on, I think two of his public utterances. I have had some correspondence with him, although I have never personally met him, and he seems to me to represent in a very effective and tactful manner the broad, fraternal and progressive spirit which is, under the leadership of just such men as he, steadily increasing in power in the South, and which it has been a part of your policy to promote by every means in your power. I should be very much mistaken if Judge Speer did not carry this National and comprehensive spirit on to the bench, and if it did not pervade all his decisions which had to deal with politico-legal questions.

Yours sincerely,

Hon. Theodore Roosevelt,
President of the United States,
Washington, D. C.

HAMLINE, SCOTT & LORD.
LAW OFFICES.
THE TEMPLE, CHICAGO.

JOHN H. HAMLINE
FRANK H. SCOTT
FRANK E. LORD
REOMOND O. STEPHENS

Copy.

Theodore Roosevelt, Esq.,
President of the United States.
Washington, D.C.

February 27th, 1903.

Dear Sir:-

In the early eighties I conceived a great admiration for the character of Emory Speer, United States Attorney for the Northern District of Georgia, by reason of the energetic and inflexible manner in which he enforced the laws of the United States with respect to elections within that District, regardless of color, and at the risk of social ostracism by his own people. Ex parte Yarbrough 110 United States 651, established the supremacy of the National Election Laws, and was the result of his work. A few years thereafter, having business in Georgia for Illinois clients, I made Judge Speer's personal acquaintance, and my earlier impressions were strongly confirmed. He was then a member of the U.S. District Bench. I found him to be held in high esteem by the bar of Georgia, and greatly admired by his fellow citizens for his learning, ability and unfailing courtesy. Some years afterwards I chanced to spend a few days at Augusta, Georgia, where Judge Speer was holding court, and renewed my acquaintance with him. While I was there, he gave a general charge to the Federal Grand Jury, in which he took occasion to enjoin the necessity of every man's yielding an unreserved allegiance to the United States and prompt obedience to its laws, in words, that for pure patriotism and sound constitutional learning equalled anything which I have heard or read.

I learn that his name is suggested as a possible nominee for the position of a member of the Circuit Court of Appeals for the Fifth Circuit, and I take the liberty of sending to you this testimonial from a fellow lawyer as to his work and ability. I believe such work as Judge Speer has done in the South should meet with the amplest recognition, and that the Federal Court should be filled by men who hold the constitutional views that Judge Speer entertains, and have the courage to express them as openly and constantly as has Judge Speer during the past twenty years.

Very truly yours,
JOHN H. HAMLINE.

Georgia
State Agricultural Society.

DUDLEY M. HUGHES, PRESIDENT.
DANVILLE, GA.

MAHTIN J. CALVIN, SECRETARY,
AUGUSTA, GA.

Danville, Ga., Jan. 27th, 1903

Mr. President:-

I have the honor to endorse Honorable Emory Speer for Judge of the Circuit Court of Appeals. His judicial record in Georgia is without reproach; he has brought this District Court from disrepute to renown and today it stands on the highest pinnacle.

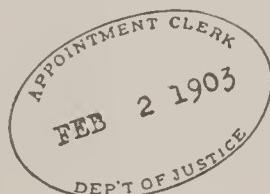
In his court the Dodge Land Company cases, perhaps the most intricate, serious and far reaching as to this section, have been adjusted. The conduct of these cases directed by his common sense, legal ability and judicious wisdom settled a question of paramount issue to land owners in Georgia. This with other of his able legal decisions brings to him the support of the yeomanry.

Whereas Judge Speer and myself disagree politically it is a pleasant duty that I perform to my state to endorse this learned jurist for this high position to which he would add luster. Trusting that you may see it wisdom to give this appointment, I am,

Very respectfully,

Dudley M. Hughes

President.



**GRAND INTERNATIONAL
BROTHERHOOD OF LOCOMOTIVE ENGINEERS.**

Room 307, Society for Savings Building

Cleveland, O Jany 29, 1903.

To the President,

White House, Washington, D. C.

Mr. President:-

We understand that the Hon. Judge Emory Speer's name has been presented to you for promotion to the Bench of the United States Court of Appeals for the Fifth Circuit, to fill the vacancy caused by the retirement of Judge McCormack. The jurisdiction of the said Court controls a large proportion of the business of all the Circuit and District Courts in that important territory embraced in the States of Georgia, Florida, Alabama, Mississippi, Louisiana and Texas, and we have been requested by the members of the Brotherhood of Locomotive Engineers employed in those States to recommend to you the appointment of Judge Speer as a man well fitted and qualified to discharge the duties of that position. The members in those States speak in the highest terms of Judge Speer as a fair and just man in all the decisions he has rendered between capital and labor. We will esteem it not only as a personal favor, but a recognition of the B. of L. E. and the B. of L. F. in those States if you can consistently find your way clear to appoint him to that position.

Wishing you and your administration all possible success,
we remain,

Sincerely yours,

M. A.ithers G. C. E.
A. B. Youngson A. G. C. E.



Law Department
City and County of San Francisco

FRANKLIN H. LANE
CITY ATTORNEY

San Francisco, Feb. 3, 1903.

Sir:

I am informed that Judge Emory Speer of Georgia desires promotion to the Circuit bench, and I beg to add the slight weight of my endorsement. Judge Speer has a head full of good sense and a heart full of courage. He appeals to me as a fine representative of the new South.

I am not of your political faith though in my recent campaign for the governorship of the State the grave charge was made by my Republican opponents that I was a Roosevelt Democrat, - with the result that I ran some 46,000 votes ahead of my ticket.

Very Respectfully,

A handwritten signature in cursive ink, appearing to read "Franklin H. Lane".



THE PRESIDENT.

THE JAMISON HABEAS CORPUS CASE.

Henry Jamison, a reputable colored man, employed as a house-cleaner and furniture-repairer in the Vineville residential section of the City of Macon, was arrested by a police officer of the city, charged with "drunk and disorderly." While confined in the police barracks and still intoxicated he was boisterous, and used profane and abusive language to the police officers, and an additional charge of "disorderly conduct in the barracks" was lodged against him.

The next morning he was summarily tried by the Police Recorder on the two charges, and was sentenced to pay fines aggregating \$60, and in default thereof to be committed to the Bibb County chaingang for two hundred and ten (210) days, or seven months.

The Bibb County chaingang was a branch of the State Penitentiary, to which felons and parties convicted of misdemeanors by the State courts were committed. Under the authority of the charter of the City of Macon, a contract with the County authorities had been made by which the County paid to the City \$8,000 per annum, and persons convicted of offenses against the municipal ordinances were sentenced to the County chaingang, the County receiving as a consideration for the amount paid the City the labor of persons so sentenced. The conditions under which these persons were worked upon the chaingang and the character of punishment inflicted is described in the opinion of Judge Speer, which is incorporated at length in the stenographic record on page 230, and is reported in 130 Federal, 351, as follows:

"The most cursory view of the evidence in the record will convince the impartial that practically every ignominious mark of infamous punishment is stamped upon the miserable throng in Bibb County chaingang. This is clear from the testimony of the

superintendent, E. A. Wimbish, and from the uncontradicted evidence of witnesses who have there expiated their disregard of sundry provisions of the City Code. The sufferers wear the typical striped clothing of the penitentiary convict. Iron manacles are riveted upon their legs. These can be removed only by the use of the cold chisel. The irons on each leg are connected by chains. The coarse stripes, thick with the dust and grime of long torrid days of a semi-tropical summer, or encrusted with the icy mud of winter, are their sleeping clothes when they throw themselves on their pallets or straw in the common stockades at night. They wake, toil, rest, eat, and sleep, to the never-ceasing clanking of the manacles and chains of this involuntary slavery. Their progress to and from their work is public, and from dawn to dark, with brief intermission, they toil on the public roads and before the public eye. About them as they sleep, journey and labor, watch the convict guards armed with rifle and shot-gun. This is to at once make escape impossible, and to make sure the swift thudding of the picks and the rapid flight of the shovels shall never cease. If the guards would hesitate to promptly kill one sentenced for petty violations of city law should he attempt to escape, the evidence does not disclose the fact.

And the fact more baleful and more ignominious than all, with each gang stands the whipping boss, with the badge of his authority. This the evidence discloses to be a heavy leather strap about two and a half or three feet long, with solid hand grasp, and with broad, heavy and flexible lash. From the evidence we may judge the agony inflicted by this implement of torture is not surpassed by the Russian knout, the synonym the world around for merciless corporal punishment. If we may also accept the uncontradicted evidence of the witnesses, it is true that on the Bibb County chaingang for no days is the strap wholly idle and not infrequently it is fiercely active. One witness, who served many months, testified that if the gang does not work like "fighting fire" (to use his simile) the whipping boss runs down the line, striking with apparent indiscrimination the convicts as they bend to their tasks. Often the whipping is more prolonged and deliberate. At times, according to another witness, also uncontradicted, the

convicts when at the stockade are called into the "dog lot." All present, the whipping boss selects the victim in his judgment worthy of punishment.

They are called to the stable door, made to lie face downward across the sill, a strong convict holds down the head and shoulders and the boss lays on the lash on the naked body until he thinks the sufferer has been whipped enough. It is but just to Mr. Wimbish to record his statement that he knew nothing of this ceremony. It may be judged from the evidence that it is a whipping more formal and drastic than any other inflicted. Since this is done at the stockade, we may presume that the spectators and guards are the only witnesses, but on the public roads, in the presence of wayfarers and bystanders, often the convict, to use an expression of a witness, "is taken down and whipped." The evidence gives us the account of two white persons who were thus whipped, one, a boy with but one arm. For this reason, it was not necessary to hold him. He stood and cried as the boss applied the lash. The other white boy was compelled to place his head between the legs of a burly negro convict and was thus immovably held. The punishment will mark the lad with infamy in the minds of his fellows as long as he may live. The offense of one of these lads was 'loitering in the depot.'"

Jamison, through his attorneys, Akerman & Akerman, applied for a writ of *habeas corpus*, alleging that his trial, sentence and commitment were illegal and void because he was deprived of his liberty and subjected to infamous punishment without due process of law, in violation of the Constitution of the United States. The writ was issued, directed to E. A. Wimbish, Superintendent of the County chaingang. A hearing was had at Savannah, where the court was then in session, but by request of the Hon. Minter Wimberly, City Attorney, for leave to file a supplemental brief, a re-hearing was had at Macon. After a full hearing many witnesses being introduced, an order was entered, discharging Jamison from custody. An elaborate opinion was rendered by Judge Speer, to which reference has already been made. To the judgment discharging the prisoner, the

City of Macon entered an appeal to the Supreme Court of the United States. Pending this appeal several other petitions for *habeas corpus* were filed by prisoners sentenced by the City Recorder to the chaingang, and by consent these cases were allowed to await the final determination of the Jamison case.

On October 16, 1905, the Supreme Court of the United States reversed Judge Speer. The Court filed no opinion, but based its decision on the case of Minnesota *v.* Brundage, 180 U. S., 499, and other decisions to the same effect. (See Wimbish *v.* Jamison, 199 U. S., 599.) In the Brundage case, the Supreme Court had distinctly recognized the right of the United States to discharge on writ of *habeas corpus* prisoners held by State authorities in violation of the Constitution and laws of the United States, but as a matter of comity decided that the prisoner should first exhaust his remedies in the State courts before appealing to the United States Court. The Supreme Court in the Jamison case, therefore, did not reverse Judge Speer upon the merits, nor hold the United States was without jurisdiction. The effect of the decision was simply that the prisoner should first exhaust his remedies in the State Courts before appealing to the United States Court.

The mandate of the Supreme Court, which appears in the stenographic record on page 389, is dated November 17, 1905. Mr. Wimberly testified that he received the mandate on the 19th. At the time the mandate was received the District Court, to which the *habeas corpus* had been addressed, had been adjourned for the term. The court house was being demolished, preparatory to the erection of a new building, and no temporary quarters had been provided for the holding of the Court. Mr. Wimberly testified that he notified Mr. Alexander Akerman, as attorney for Jamison, that he would present the mandate to Judge Speer and ask for an order making it the judgment of the court. (See Stenographic Record, page 448.) Mr. Akerman testified that he carried the mandate out to Judge Speer's house and informed him of Mr. Wimberly's desire that it should be

made the judgment of the court, and that the same time requested Judge Speer, as a courtesy to him, not to make the mandate the judgment of the court in his absence, stating that he was on the eve of leaving town, as it was his intention, representing Jamison, to sue out a writ of *habeas corpus* in the State court. (Stenographic Record, page 1056.)

On November 24, 1905, the Judge, by appointment, met certain attorneys at the parlor of the Hotel Lanier for the purpose of passing on some question in the R. H. Plant bankruptcy matter. Mr. Wimberly appeared before the Judge at this time with the mandate of the Supreme Court and with an order prepared by himself making the mandate the judgment of the District Court, and requested Judge Speer to sign this order. The Judge stated that the court was not in session, and that he would not entertain any other matter save the bankruptcy case then on trial. In response to Mr. Wimberly's question as to when the court would be in session and his suggestion that he understood the court always to be open in *habeas corpus* cases, Judge Speer said the papers could be left with the Clerk. (See printed record, pages 425, 426, 444 and 445.) The mandate was immediately turned over to the Clerk by Mr. Wimberly, and was marked filed November 24, 1905. Within five minutes after the mandate had been filed, Mr. Wimberly directed the Chief of Police to seize Jamison and turn him over to the Superintendent of the chaingang. (See testimony of Minter Wimberly, Stenographic Record, page 504.)

The Chief of Police carried out this direction by going to Jamison's home between eleven and twelve o'clock on the night of November 24, placing him under arrest, confining him in the City barracks, and on the morning of November 25, turned him over to the Superintendent of the chaingang. While the mandate was not made the judgment of the Court by formal order, it was filed in the Clerk's office by direction of the Judge, and the City authorities proceeded as though it had been formally made the judgment of the court. No further effort appears to have been made at that time by Mr. Wimberly or any one else to have the mandate made the judgment of the court.

On November 25, the morning after his re-arrest, Jamison applied to Hon. William H. Felton, Judge of the Superior Court of Bibb County, for a writ of *habeas corpus*. On November 28, Judge Felton remanded him to the custody of the Superintendent of the changang. On the same day Jamison sued out a writ of error to the Supreme Court of Georgia. Judge Felton, however, declined to grant a *supersedeas* or to allow Jamison to be enlarged on bail, and he was re-incarcerated on the chaingang. Under the rule of practice in the Supreme Court of Georgia, it was altogether probable that Jamison's case would not be reached for hearing by that Court until after Jamison had completed the service required by his sentence, in which event the case would have been dismissed by the Supreme Court as a moot question. Having, therefore, exhausted his remedies in the State Courts, and it being apparent that a considerable portion, if not all of his sentence, would be actually worked out before his case could be heard in the Supreme Court, Jamison, on November 30, applied the second time to the United States Court for a writ of *habeas corpus*, alleging the proceedings in the State court and that he had exhausted his remedy therein, and that his imprisonment was without process of law in violation of the Constitution of the United States.

On December 1, an order was granted directing the writ to issue, and Jamison, a few day thereafter, was enlarged on bail. The second *habeas corpus* appears in the printed record, on page 395. The hearing was assigned on December 11, at Valdosta, at which point the court was then in session, and the hearing was by order of the court postponed, upon the ground that the case involving the constitutionality of sentences by the Recorder of the City of Macon to the County chaingang was assigned for hearing in the Supreme Court of Georgia on December 18, and the opinion of the Supreme Court of Georgia was desired before the case should be disposed of in the United States Court.

On the morning after the re-arrest of Jamison by direction of the City Attorney, upon the application of Jamison,

verified by the oath of his counsel, Alexander Akerman, a *rule nisi* was issued against Minter Wimberly, City Attorney, Conner, Chief of Police, and Wimbish, Superintendent of the chaingang, calling on them to show cause why they should not be attached for contempt for re-arresting Jamison after he had been discharged by order of the United States Court, and while this order remained unrevoked the rule was made returnable on January 2, 1906, at which time a hearing was had. The court reserved its decision, and no further action was taken in the matter. The proceedings on this rule appear in the printed record, on page 423, *et seq.*

In the meantime, on December 18, 1905, the case of Pearson *v.* Wimbish was argued in the Supreme Court of Georgia. This was a writ of *habeas corpus* issued by the Judge of the Superior Court of Bibb County upon the application of Pearson, who had been sentenced by the Recorder of Macon to a term on the Bibb Coupty chaingang, the sentence being attacked upon the same grounds as those appearing in the original Jamison petition. The opoinion of the Supreme Court of Georgia was handed down on January 13, 1906. It fully sustained Judge Speer in his decision that sentences by the Recorder to the Bibb County chain-gang were in violation of that provision of the Constitution which declares that no person shall be deprived of life, liberty or property except by due process of law. The opinion of the court through Mr. Justice Evans (Pearson *v.* Wimbish, 124 Georgia, 701), is illuminating. We beg to quote:

“For a person lawfully to be made to suffer punishment as a lawbreaker, there must be not only process of law but due process. Process which may be sufficient to authorize punishment for petty offenses by fine, imprisonment for a reasonable time in the city barracks (or even to work upon the public works of a city, if there be in the charter any authority to impose such a sentence as confinement at labor under municipal control), will not suffice for sending a person to a county chaingang for several months. When the punishment is imposed is the same, or

of the same nature, as that inflicted upon offenders against the laws of the State, and to be suffered in company with them, due process requires a trial to some extent analogous to the trial of persons accused of misdemeanors against the State. To call the offense "petty" for the purpose of trial, but as serious as the violation of a State law for the purpose of punishment, is inconsistent. If the punishment is of the same character as that imposed for a State offense, the infraction of the municipal ordinance can not be called a "petty" offense in comparison with one against the State. A sentence of a City Recorder, without a right to a trial by a jury and with no more formal procedure than an entry on a docket, which subjects the prisoner to work in a county chaingang for three months, along with persons duly convicted of the violation of State laws, is not due process. It is declared in the Penal Code, Sec. 1036, that all felonies, save those therein enumerated, 'shall be punished by imprisonment and labor in the penitentiary for the terms set forth in the several sections in this code prescribing the punishment of such offenses; but on the recommendation of the jury trying the case, when such recommendation is approved by the judge presiding on the trial, said crimes shall be punished as misdemeanors. If the judge trying the case sees proper, he may, in his punishment, reduce such felonies to misdemeanors.' Even if those regularly convicted of felonies, but who are left in the custody of the county authorities, be kept separately, nevertheless those falling within the provisions of the Penal Code above referred to are detained in the county chaingang. If a person who is convicted of some petty municipal offense can, after trial before the Recorder, be sent to the county chaingang, he would not only be sentenced to a punishment similar in its nature and character to that imposed for misdemeanors against the State, but be placed in direct association with, and be confined along with, felons whose punishments have been reduced under recommendation. It can not be that such a sentence can be imposed in Georgia by one man alone, trying a criminal case. If the sentence can be for three months in the county chaingang, it may be for six or twelve months, if the Legislature should permit it. In fact, where would be the limit of

Legislative power to prescribe the extent of punishment to be meted out on the sentence of a Recorder? It is not a question of the person who may be subjected to such a punishment; it is a question of whether our organic law has entrusted such arbitrary power of punishment to be imposed, even upon the humblest citizen, by a municipal recorder sitting alone. The entrusting of such power of punishment for so-called petty offenses to a single man is not consonant with the spirit of our institutions or with our Constitution, which declares that no person shall be deprived of life, liberty, or property without due process of law. Process which tries a man without formality for a 'petty' offense, and punishes him in the same manner as, and along with, criminals violating the laws of the State, with no right to a jury trial, no record save the entries upon a recorder's docket, and upon his judgment alone, is not due process. We do not hold that the recorder's court of the City of Macon is illegal, or that the Recorder can not proceed to try offenders against the municipal ordinances and pass such sentences as the law authorizes; but what we hold is that a sentence which requires the offender to be confined at labor in the county chaingang along with violators of the State laws does not furnish constitutional authority for such confinement, and that the provision of the charter of the City of Macon which authorizes the confinement of offenders against municipal ordinances in the county chaingang for not more than six months is unconstitutional."

By consent the Jamison case was disposed of by the Supreme Court at the same time that Pearson's case was decided. This effectually terminated all proceedings in the Jamison case in the United States Court, as well as all matters growing out of it. According to Mr. Wimberly, nobody took any further interest in the Jamison case after that time, or in the other cases pending in the United States Court. The City of Macon procured an amendment to its charter, by which the contract with the Commissioners of Bibb County for working municipal offenders on the chain-gang was set aside, and a foul blot on the fair name of the City was thus removed.

Except on the one occasion at the parlor of the Hotel Lanier already alluded to, no effort was made to take an order making the mandate of the Supreme Court the judgment of the District Court until June following. On the next day, Jamison was taken in custody by the Sheriff of Bibb County on his application for *habeas corpus* to the State Court. He remained in such custody until the 28th. On the 30th he applied for his second writ of *habeas corpus* in the U. S. Court. After being enlarged by virtue of the second writ no possible good could have been accomplished by making the mandate the judgment of the court. Mr. Wimberly and the other city authorities evidently recognized this, and made no further effort to secure an order. Judge Speer was holding court in Valdosta a large part of the month of December. Early in January the Judge went to Savannah, and was engaged there in the trial of the case of United States *v.* Green and Gaynor until the late spring. In the meantime the Pearson case had been decided, putting an end to the confining of municipal prisoners on the chain-gang. On the return of the Judge to Macon, on motion of Mr. Akerman, the mandate was made the judgment of the court on June 8, 1906, and some time thereafter upon a similar motion by Mr. Akerman the rule against Wimberly and others for contempt was dismissed.

It has been charged that in this case, Judge Speer defied the mandate of the Supreme Court and willfully refused to carry out its judgment. A recital of the facts as they occurred, supported in each instance by the record itself, shows how little foundation there is for this charge. The most that can be said is that Judge Speer at a time when the Court was not in session declined to pass an order in the case, after having been requested by Mr. Akerman not to act on the mandate until he had an opportunity to present a petition to the State Court. That no sort of harm came from the court's declining to pass the order at the time presented, is perfectly apparent. During only two days at most was Jamison subject to be confined by the sentence of the Recorder, he having been in charge of the Sheriff by order of the State Court from November 25th to 28th, and having

filed his second petition for *habeas corpus* on November 30.

In the light of all the circumstances, can the court's refusal to grant the order at the request of Mr. Wimberly be justly characterized improper or arbitrary? Surely the circumstances of the case, and particularly the harsh, arbitrary and unreasonable treatment which this prisoner had received at the hands of the city authorities and was about to be again subjected to are not to be lost sight of when the conduct of the Judge in the matter is made review. That the Judge's conduct in the case was severely criticised by the municipal authorities is quite natural when the circumstances surrounding the case, as disclosed by the testimony, are taken into consideration: Mr. Custis Nottingham, the then Recorder, testifies that he resented the interference of "an alien court" in municipal affairs. Mr. Wimberly testifies that he feared the liberation of Jamison and other prisoners through the writ of *habeas corpus* would result in depopulating the chaingang and breaking up the valuable contract between the City and County authorities. This result was actually accomplished by decision of the Supreme Court in the Pearson case, but the Supreme Court was not "an alien court," and hence its interference was not so seriously objected to.

An effort has been made to show that Judge Speer acted from improper motives in this case, the insinuation being that he was protecting a private servant of his own, but the record shows that Jamison was not in Judge Speer's employ. He sometimes did work about the house, as he did for other families in the neighborhood. Mr. Akerman testifies that Mrs. Speer was interested in Jamison's behalf, and offered to pay him a fee to secure his liberation from the chaingang. He refused to accept the fee, however. His expenses, if not his fee, were paid by the colored people of Macon, the amount being raised by public subscription. Mr. Akerman also testifies that Judge Speer suggested his bringing the petition for *habeas corpus* in the State Court rather than in the United States Court. But, after all, has a judge no right to protect upon proper application in a

regular and legal way the defenseless and oppressed merely because he happens sometimes to be employed about his home, and if in so doing, and as the direct result of the opinion which he renders in the case, so iniquitous an institution as the Bibb County chaingang as the place for punishment of petty violation of municipal ordinances is broken up, is his conduct to be regarded as altogether reprehensible?

THE HUFF CASE.

Judge Speer's action in this case has been criticised before the Committee by W. A. Huff, the principal defendant, and by T. S. Felder, one of the attorneys, who became connected with the case some time after it was instituted. The original bill was filed on August 5, 1899. The complainants were William L. Bidwell, of Connecticut, and Franklin E. Woodford, of New York, executor of Emerson S. Phelps, against W. A. Huff, individually and as trustee, against the Mayor and Council of the City of Macon, Edison Huff and A. P. Herrington. The bill alleged that W. A. Huff, for himself and as trustee for his minor children, Mattie J. C. Huff (now Jennings), and Edison Huff, on the first day of August, 1893, executed to Emerson A. Phelps, a deed to secure a debt, by which deed he conveyed certain lots in the City of Macon. Woodford, executor of Phelps, brought suit in the State court, and on December 11, 1897, obtained a judgment for twenty-four hundred (\$2400.00) dollars, principal, which judgment was general lien on all the property owned at its date by W. A. Huff, individually and as trustee, and a special lien on certain lots referred to in the litigation as the "Armory property." An execution was issued on December 11, 1897, and turned over to the deputy sheriff of Bibb County, who entered thereon a return of *nulla bona*. It was alleged that the failure of the levying officer to enforce the execution was ascribable to certain illegal tax sales of the prop-

erty, and other illegal acts set out in the bill. It was further alleged that on June 1, 1893, W. A. Huff executed to William L. Bidwell, of Connecticut, a mortgage on the lot known in the litigation as the "Kimball House" property, to secure a debt of \$1,714.12. This was foreclosed in the State court and a general and special judgment obtained.

On this an execution was issued on November 16, 1897, to be levied on all the property of W. A. Huff, and especially on his undivided five-sevenths interest in the city lot, upon which the mortgage had been given. This execution was placed in the hands of the Deputy Sheriff of Bibb County, who likewise entered a return of *nulla bona* thereon. It was further charged that for several years W. A. Huff, as individual and as trustee, had failed to pay taxes on this property and on his other property, and had permitted the property to go to sale under grossly excessive levies made thereon. The bill further alleged that Huff had cast the entire burden of all his taxes on the particular property mortgaged or conveyed to these two complainants, that after accumulating some sixteen hundred (\$1600.00) dollars of tax executions against the Kimball House property, the City of Macon had imposed a paving tax on that property for two thousand and sixty dollars and sixty-one cents (\$2,060.61), and a further special assessment for sewer connection and an additional sum for curbing, the burdens from the city taxation and assessment aggregating about four thousand (\$4,000) dollars in addition to the State and County taxes, and it was alleged that this would consume the value of the property and destroy the lien held by Complainant Bidwell and amounted to a confiscation of the property pledged to him, for the reason that the special assessment was in substantial excess of any special benefits accruing to the property. This, it was alleged, was in effect a "taking, under guise of taxation, of private property for public use without compensation." It was also alleged that the assessment was made by the city under a rule which excluded any inquiry as to specific benefits to the property, and that the Statute under which the assess-

ment was made, furnished to property holders no process of law under which the question of the extent of the benefit, if any, to said property could be judicially investigated. The bill alleged that the Mayor and Council of the City of Macon, before the paving assessment was made, had for many years assessed the property for fifteen thousand (\$15,000) dollars, and since that time assessed it at ten thousand (\$10,000) dollars, and that this was true, although the city tax assessors had generally increased the valuations placed by them on property throughout the city. It was further alleged that W. A. Huff had practically abandoned this property to its burdens and had made no effort to pay off the load of debt, taxes and special assessments charged against it, had taken no step to defend the property against illegal assessments, had failed and refused to pay all the taxes annually falling due thereon, had permitted tax executions issued against him on this and his other property, both inside and outside of the city, to be levied on this particular lot, and had taken no steps to prevent sales under such executions, and that the Mayor and Council of Macon now claimed a lien on said property for paving assessment, and "unless restrained will cause the property to be sold, to the irreparable injury of complainants and the destruction of the mortgage and lien thereon held by Bidwell, and that the paving assessments were in violation of their rights under the Constitution of the United States. It was moreover alleged that on May 24, 1894, the Mayor and Council caused the city tax executions against W. A. Huff, amounting to \$225, to be levied on this lot, which was sold and purchased by the city for \$230.75, that this levy was grossly excessive and illegal and the complainants prayed that the Mayor and Council be compelled to surrender their tax deed and that same be cancelled. The bill points out that although the City of Macon sold this property, they had continued to assess it for taxation and had continued to issue executions against it, thus recognizing their title as invalid.

The bill further alleged that W. A. Huff was the owner of a large amount of valuable real estate outside of the City

of Macon, and that for several years all the taxes assessed by the County of Bibb against him individually and as trustee, had been levied on the Kimball House property, notwithstanding the fact that the value of the property outside of the city considerably exceeded the value of the property of the defendant in the city, and that this was a scheme of Huff to cause all his taxes to be charged against this property so as to relieve his other property therefrom. It is charged that these levies have likewise been grossly excessive, and that under such levies the property has been sold and purchased by the County of Bibb, and by the procurement of Huff the County of Bibb had conveyed said lands to other parties for the purpose of placing the same beyond the reach of complainant's lien. The bill charges that the land mentioned and described in the deed to secure debt made by Huff, individually and as trustee, to Emerson A. Phelps in his lifetime, on what is known as the Armory property, on which Woodford as executor holds a special lien, has from time to time been sold at tax sales under tax executions. some of them for city taxes and some for state and county taxes, during several years past, that said tax sales were void because the levies were grossly excessive, that the sales were illegal and passed no title, and that the Mayor and Cocncil of Macon became the purchaser of various tax titles, and now claim to own the said land. The bill prays that said deeds shall be likewise produced in court and cancelled. Similar averments were made with regard to the different tax sales for state and county taxes.

The bill pointed out and described a large body of land contiguous to the City of Macon which belonged to Huff, individually and as trustee, which had been conveyed to the Scottish-American Mortgage Company to secure a debt of fifteen thousand (\$15,000) dollars, besides interest, and that so long as the debt remains outstanding, "the legal title to the property is in the grantee and the same cannot be levied on under executions by law, but complainants allege that they are entitled to reach the equity of redemption in said lands and can only do so by the interposition

of a court of equity." Further it was stated in the bill that W. A. Huff, individually was seized and possessed of other property, and that by reason of deeds to secure debts on various of said properties as well as tax deeds and other incumbrances, complainants cannot reach and subject the same to their debts, except through the aid of the court. The bill charged that Huff was insolvent. The complainants prayed that an accounting be taken and the taxes apportioned against the different properties upon which the same were chargeable, that the assets of W. A. Huff might be marshalled and distributed among the different creditors according to their rights and equities, liens and priorities, and that since their remedies at law have proven unavailing that they are entitled to the aid of a court of equity, and that their bill may have the effect of a creditor's bill not only for themselves, but for all other creditors who might intervene and be made parties thereto. The bill concluded with prayers appropriate to the relief sought. The complainants were represented by Hall & Wimberly, Attorneys. Demurrers were filed by the City of Macon, through its attorney, Minter Wimberly, and W. A. Huff, individually and as trustee, through his attorneys, Alexander Proudfit and Anderson & Grace.

The demurrers to the bill were overruled by Judge Speer on July 7th, 1900, and his opinion thereon is reported in the 103rd Federal Reporter, page 362.

Answers were filed on September 3, 1900, by the defendants. In the following month the bill was amended on the motion of complainants and in the same month the City of Macon moved to dismiss the case because replication had not been filed. Thereafter a petition was filed by complainants to make the Scottish-American Mortgage Company a party defendant and an order was obtained on petition, to perfect service on Mrs. Jennings, one of the party defendants. The Scottish-American Mortgage Company filed an answer to the amended bill on May 31st, 1902. The preliminary matters having been disposed of, Judge Speer appointed Clem P. Steed permanent receiver, he having been

appointed temporary receiver on the filing of the bill. At the same time, May 31, 1902, an order was taken directing Mr. J. N. Talley to take and report the evidence in the cause under the equity rules. Later, however, this order was revoked because of the engagements of Mr. Talley as court reporter, and Mr. Charles Cork was named as examiner, "in order to expedite the hearing of said cause," and the time for taking evidence for complainants and defendants was limited by Judge Speer. However, thereafter always on the application of the parties and for cause shown, fifteen extensions of time were granted, there being no objection to any of the extensions, and several of them being at the instance of Mr. Huff, and one being granted because of the absence of T. S. Felder in the Legislature.

The evidence taken by the Examiner was filed on January 6th, 1905, and a hearing was had during the month, and eighteen days later, on January 24th, 1905, the court delivered its opinion on the final hearing and requested counsel to frame decrees in accordance with the opinion of the court.

Counsel being unable to agree, thirty-eight days later, on March 3, 1905, an order of reference was made to J. N. Talley, as Standing Master, to report such matters of detail as might be necessary and appropriate to the decree in accordance with the opinion of the court. The evidence filed by the Examiner consisted of one thousand and fourteen pages, and related to many topics which counsel thought should be embraced in the final decree.

On the following day, to-wit, on March 4th, Mr. Huff filed a petition for leave to file a cross bill. Thirteen days later, to-wit, on the 17th of the same month, arguments were heard and Judge Speer refused to allow the filing of the cross bill, and filed an opinion which is in the record.

Various hearings were had before the Master, all hotly contested, and on September 27th, 1905, he filed his report, practically submitting the form of final decree in the case. Exceptions were filed by the various parties, and by W. A. Huff on Jan. 2, 1906, but three days later, on January 5,

1906, after argument, the Master's report was confirmed, and on the next day the final decree was signed. By the final decree it was decreed that the court had jurisdiction, that the complainants were entitled to the relief prayed in the bill, that W. A. Huff was insolvent, and that his property was so incumbered at the time the bill was brought that the enforcement of the remedies in the common law courts were wholly inadequate for the enforcement of the liens and claims of creditors; that the equities set up in the bill were sustained by the record and evidence in the cause. It was also decreed that the several tax deeds executed by the Sheriff of Bibb County, and the various deeds of conveyances made in pursuance of the tax sales, be declared void, and that no title passed thereunder, and particularly describing *thirteen deeds* as illegal and void and directing them to be cancelled. The decree then directed that the State and County taxes for the following years be paid, to-wit: 1891, 1893, 1895, 1899, 1900, 1901, 1902, 1904, 1907, and that the taxes due the City of Macon be paid for the following years, 1893, 1894, 1895, 1896, 1897, 1899, 1900, 1901, 1902, 1903, 1904 and 1905. It was further ordered that the assets be marshalled and the respective priorities and liens of the various creditors be enforced, that W. L. Bidwell, and F. E. Woodford, Executor, be paid the sum due them, that the lands on which the Scottish-American Mortgage Company held a lien, be sold for the purpose of paying the indebtedness due that Company, and leaving the overplus for the payment of other creditors, also providing for the payment of other creditors and intervenors, and specifying the manner of payment.

It was further decreed that the sale of the properties be made, and unless made in accordance with a plan consented to by the parties, that they should be sold by commissioners, in the best manner possible, so as to bring the largest price for said property, and specially "that the commissioners shall carefully guard against any and all schemes, if any there be, to chill the bidding or obtain the whole or any portion thereof, at less than its real value."

The decree appointed E. Y. Mallary and John F. Cone as commissioners to make the sale, and provided for a public sale before the court house door, and that certain pieces of the property might be sold for one-third cash, and the balance on deferred payments at seven per cent. interest, and that "all other properties be divided into such lots or parcels as will in the judgment of said commissioners be attractive to purchasers, and be sold for one-third cash, one-third in twelve months and one-third in eighteen months, with interest on deferred payments at the rate of seven per cent., but with the privilege of paying the entire purchase price in cash."

Just prior to the signing of this decree, Mr. Huff objected to the payment of interest on the judgments of the judgment creditors for the reason that the property had been for some years in the custody of the court and had not earned an income sufficient to pay the interest. In overruling this motion, Judge Speer, on January 6, 1906, filed an opinion in which he stated:

"It is now insisted, immediately before the decree is signed, that the judgment creditors are not entitled to interest on their judgments for the reason that the property has been for some years in the custody of the court and not earning an income sufficient to pay interest. This does not seem to be a question which Mr. Huff, the respondent is in a position to urge. His obligation is clear, and that is to pay the judgments, both principal and interest.

"The solicitors for the Scottish-American Mortgage Company also are entitled to interest. They have a judgment granted in the usual way conformably to the laws of the State for their fees. This was incorporated in the general judgments of their clients, and I am unable to discover any reason which will deny them interest upon their liens.

"Now in case it should turn out that the property would not bring a sufficient sum to pay all the liquidated demands, it might be true that some creditor could insist that interest should not be allowed in order to enable him to obtain the principal of his debt, but Mr. Huff, the respondent, unhappily has

no such right. There are the judgments. There is the property. The latter was unproductive and brought about a state of insolvency before the creditors' bill was filed. It has been practically unproductive since that time, but through motives of humanity the court for many years, that is to say, practically during the entire pendency of the litigation, has caused the Receiver to pay, or offer to pay to Mr. Huff, for the support of himself and family, a sum amounting to about \$25.00 per week. This a part of the time he received, and a part of the time declined to take. A small balance is now in the Registry of the Court.

"We have done the best we could to serve and to protect this distinguished, aged, but financially unfortunate gentleman. We have in hand his property. We have also before us the liens of his creditors, and to the extent that the property will go, those claims must be discharged, principal and interest. The law commands us and we have no other alternative.

"The court will endeavor to appoint commissioners of high probity and high business ability, and will, if need be, give them directions to make sales so as not to sacrifice any interest Mr. Huff may have, and the decree must direct that they shall sell the property not as an entirety or on the same day, but with the best and most favorable terms of advertisement and display of the value of the property so as to bring about the largest purchase price."

On March 6, 1906, an appeal was taken from this final decree by the defendants, W. A. Huff, and the City of Macon, to the Circuit Court of Appeals, and not until February 26, 1907, did that court render an opinion (151 Fed., 563). This mandate was returned on April 12, 1907, and eight days later made the judgment of the Circuit Court, to-wit, on April 20. This, however, was not put in execution because of an appeal by Huff to the Supreme Court of the United States. This appeal was dismissed, but not until March 17, 1909. (214 U. S., 528.) The Circuit Court of Appeals had held that the Federal Court had jurisdiction of the case, that "where the property of a judgment debtor

is so encumbered by liens and taxes that although the judgment creditor has a lien thereon under the laws of the State, such lien cannot be enforced by execution, the creditor may maintain a suit in equity for the adjustment of the rights and priorities of the several lien holders," and that the granting or refusing the permission to file a cross bill is wholly in the discretion of the court, and the refusal of such permission was a proper exercise of such discretion. In the opinion of the Circuit Court of Appeals in the discussion of paving assessments, that court observes "that the decision of the learned Circuit Court was made soon after the Supreme Court announced its opinion in *Norwood vs. Baker* (172 U. S., 292), and before the rendition of the later judgments of the Supreme Court bearing on the same subject," (the later cases are thought to change the rule announced in the first) and further remarked that after the decree was entered, and before the appeal had been perfected, the plaintiffs tendered to the City the full amount of taxes claimed by it to be due on the "Kimball House" property, the Court of Appeals, decided that the City should have accepted that tender. It then amended the final decree of Judge Speer by allowing the City the full amount of taxes claimed by it, which the plaintiffs were willing to pay.

With this modification by the Circuit Court of Appeals, the decree of Judge Speer was affirmed. If the affirmance or reversal of a judge of the Circuit Court in an inquiry of this sort is deemed of importance, here was no reversal. Judge Speer, in his decision, had left open the matter of the paving tax. True, the plaintiffs tendered the amount of this assessment. This, however, was not tendered until after the decree had been signed and the appeal entered and notice of appeal given. Besides this tender of the payment of taxes was made to the City by the party offering it, and did not take place through any order of the court. The appeal having been entered, the matter at that stage was beyond the control of the trial court, and could have been dealt with only by the appellate court when the mandate of that court was made the judgment of the Circuit Court.

Huff appealed anew, now to the Supreme Court of the United States. There the matter was held until May 18, 1909, and when the judgment of the final court was made, the final decree of 1906 was for the first time ready for execution by the Commissioners.

The decree having been affirmed, a sale of that portion of the property known as the "Kimball House" was effected on July 1, 1909. This was done by consent, and then the sale of the remainder of the property was postponed until December, 1909. This was done for the benefit of Mr. Huff. It is a well known fact that in the South little money is available until after the cotton crop is made and gathered. And besides, the postponement was necessary in the interest of Huff to give ample time for subdivision and advertisement. The solicitous interest of Judge Speer to make this property bring an ample price not only to pay all the debts of Huff, but to leave him something for his old age, appears throughout the entire record. It expressly so appears on page 1022 of the printed record, when the language following is used:

"We have done the best we could to serve and to protect this distinguished, aged, but financially unfortunate gentleman. We have in hand his property. We have also before us the liens of his creditors, and to the extent that the property will go, those claims must be discharged, principal and interest. The law commands us and we have no other alternative.

"The court will endeavor to appoint commissioners of high probity and high business ability, and will, if need be, give the directions to make sales so as not to sacrifice any interest Mr. Huff may have, and the decree must direct that they shall sell the property not as an entirety, or on the same day, but with the best and most favorable terms of advertisement and display of the value of the property so as to bring the largest purchase price."

The public sale was made by upright and skillful men, who had been named as commissioners, the one a banker and the other a real estate man, on the first Tuesday in

December, 1909. The property brought at this sale \$70,700. The city lots known as the "Armory property" of the estimated value of \$15,000, was not sold. There are several interventions in the record wherein third persons claim that they have bought certain lots of this property from Huff and paid him therefor. These interventions are not yet determined, or the rights of the claimants ascertained. However, through the other sales enumerated, enough money was realized to pay the indebtedness of Mr. Huff, and the costs and expenses incident to the Huff cause.

The foregoing is an outline of the proceedings had on the main case. There are certain features about which specific complaints have been made by W. A. Huff and T. S. Felder. The attention of the Committee is respectfully called to the easy explanation and avoidance of each of said complaints.

When the creditors' bill, based upon judgments previously obtained in the State courts, executions, and returns of *nulla bona*, was originally presented on August 5, 1899, by those famous and experienced solicitors in equity, the late Olin J. Wimberly and his partner the late, the Honorable John I. Hall, Judge Speer issued a *rule nisi* calling on the defendants to show cause why a receiver should not be appointed, and the injunction prayed for granted. The date of the hearing was left blank so that a date might be agreed upon which was satisfactory to counsel, or so that either party might on motion bring on a hearing. Clem P. Steed, a member of the Macon Bar, of the highest character, was appointed temporary receiver, with power only to hold the property until the hearing on the *rule nisi*. There was no such hearing; no motion asking it; no motion to discharge the receiver, but four days thereafter Mr. Huff came before the court and filed a petition asking that the income from the property be turned over to him for the support of himself and family. Since this could only be done through the receiver, the motion was in a sense a ratification of his appointment.

But this was not all. His application expressly stated, "for the present he (Huff) will not ask your Honor to

modify or change said order in any other respect." This appears from the printed record in the Huff case, page 32. This itself was ratification. The Committee will look in vain through the record for any request or motion made to the trial court by the defendant Huff to modify or vacate the order appointing the receiver. Indeed, not only did he in writing express his desire that the property should be administered and sold by the court (Sten. Record, p. 1380), but in his oral testimony before the Committee (Stenographic Record, p. 1382), he expressly re-stated his wish and willingness that this be done. Since the court could administer the properties through the receiver only, here is double additional ratification by Huff of the appointment of that receiver. The entire record will show that the creditors' bill was shrewdly utilized by him as a shelter or protection against his creditors, while under the kindly orders of Judge Speer he continued for years to receive the income and rents collected by the receiver and turned over to him for his support.

The fact of his assent to the appointment of the permanent receiver also appears from the decree of May 31, 1902, which recites that the cause "had come on regularly to be heard; it appeared that such appointment was necessary, and none of the parties to said cause contesting the necessity of such appointment." (Huff Record, p. 132.)

This judgment of the court, it is submitted, can not now properly be made the subject of collateral and verbal attack. Indeed, no complaint of this action was made until an appeal was entered from the final decree of January 6, 1906, and then to the Circuit Court of Appeals only. Then it appeared that the consent to the receivership might affect the amount of costs or expenses taxable against Huff. A controversy arose between Huff and his counsel, Mr. Proudfit and Mr. J. L. Anderson. It appears from the testimony of Huff (Stenographic Record, p. 1342), that on January 31, 1906, he obtained from Mr. Proudfit a letter stating that "The court in its discretion appointed such receiver, and that no such consent was given;" and that this letter was

used before the Circuit Court of Appeals. If this is true, the Committee may well consider how it was that a personal letter from defendant's own counsel to the defendant himself, could be used as a part of the record on appeal, or in any manner before the appellate court. The letter, while written by a gentleman of honor, was not evidence. It did not have the sanctity of an oath. Mr. Huff stated that it was obtained to contradict the affidavit of Mr. James L. Anderson, attorney for the Scottish-American Mortgage Company, in which Anderson swore that Proudfit got up in open court and stated there was no opposition from his side of the case to the appointment of a permanent receiver. (Stenographic Record, p. 1350.) Whatever may be the propriety of admitting this letter on appeal, this controversy between Huff and his former counsel cannot be held to affect Judge Speer. The order appointing the permanent receiver does not purport to be a consent order. It simply recites that the parties did not contest the necessity of the appointment, and no one contends, or has contended, that it was contested. What then is Huff's complaint? The judgments, executions, tax fi. fas. and the like against him were fully ascertained and proven. He never contested the validity of the claims of those non-resident creditors, and the intervening creditors, who for so many years he has defeated of their money. Loans secured by mortgage or deeds to secure debt to real estate, are the chief basis of credit of the people of many states, particularly in the South. What, it may be inquired, would be the result to the credit and the condition of the Southern people if all debtors giving such security should pursue the course which has been adopted by Huff? Having used every possible expedient for delay, and every possible appeal to delay his creditors in their righteous demands, and having abused the sympathy of the Judge for his age and supposed unfortunate condition, and his kindly purpose to make the property bring as much as possible so as to secure the defendant comfort in his old age, Huff then turned upon the judicial officer who had been his benefactor, with a savage and mer-

ciless ferocity unparalleled in the annals of jurisprudence. He penned an address to the Judge who had striven to aid him in every possible way, an address setting forth calumnies as vile and false as any ever conceived by the convicted villains in the cells of Newgate and Sing Sing, toward the officers of the law whose duty had contributed to their condemnation. For this he was tried and convicted by another Judge, a Judge whom Judge Speer does not know and has never seen.

At length before this Committee, he was pressed for a statement of his complaint against Judge Speer. He replied (Stenographic Record, p. 1382): "My chief complaint has been all along that my property was outrageously sacrificed. That is the gist of the whole business. If the property had been sold right, I would have a handsome sum now to retire on."

Now see how plain a tale will put him down. Take the property on Fourth Street, known as the Kimball House. On the hearing before Judge Speer incident to the final decree, evidence was taken as to its market value. Huff himself testified (Huff Record, page 580): "Well, I think properly handled, I think it should sell very readily for fifteen thousand dollars." The sale was agreed to by Huff. It sold for \$21,500, that is, \$6,500 more than the sworn estimate of its value given by Huff.

Again there was sold a tract of 18.08 acres of land in Vineville. This was sold by the receiver June 26, 1905. This sale was made to the State of Georgia, and on the land now stands the State Academy for the Blind. The sale was consented to both by W. A. Huff and his attorney. These eighteen acres and a fraction were a part of the Brantley place. Huff had testified to its value. (Huff Rec., p. 577.) He said: "I think it is worth \$500 an acre." At the sale it brought \$600 an acre, that is to say, 16.21 acres of this land brought \$600 for each acre sold. Huff had consented to the sale and its method, and the proceeds were sixteen hundred and twenty-one dollars in excess of his sworn estimate of its value.

In addition to this a small tract of 1.87 acres was sold by the receiver. It had been valued by Huff in his testimony (Huff Record, p. 578), at "four or five hundred dollars." This tract was sold by the receiver at the rate of \$600 per acre, or \$1,122, thus bringing \$622 more than the highest valuation put on it by Huff.

We have now discussed two sales made through his consent. Having consented to the method he cannot now object. What is the aggregate result? The officers of the court have secured from the property thus sold a total of \$8,743 more than the highest valuation put on this property by Huff himself. Where then is the outrageous sacrifice to which he testifies?

We now come to the public sale made in pursuance of the final decree of January 6, 1906, confirmed by Judge Speer, and on appeal affirmed by the Circuit Court of Appeals. As to the value of this property, Huff also testified (Huff Record, pp. 570-579). The highest valuation he placed thereon was \$48,165. When sold by the officers of the court it actually brought \$70,700. This was \$22,535 more than the highest estimate of its value Huff himself has given under oath.

Thus it will be seen that the officers of the court have realized for Huff an excess of value over his estimates of \$31,278.

But it is said and stressed with great emphasis by Mr. T. S. Felder, that when the property was sold at public sale and brought \$70,700, that the fund so produced was more than sufficient to pay Mr. Huff's indebtedness by \$40,000. In this statement, as in much else that he said, it will be found that Mr. Felder is as clearly wrong as he is clearly prejudiced. This sale was in December, 1909. The final decree had been made nearly five years before. Interest on all of the indebtedness was running all the time, and the first definite data the record affords is given by the report of the Master filed on July 12, 1912. All the time Huff was hotly contesting every possible point, and when driven by inexorable law and the rulings of the higher

court from one position, would promptly seize upon another, and continue the fight. At the date of this report it appears that there was due to Huff's creditors \$54,511.71. This does not take into consideration the payment of \$10,880 which had been paid to the Scottish-American Mortgage Company, and the indebtedness for taxes which he had permitted to accumulate until they aggregated the amazing sum for such indebtedness of \$20,513.27. This made a total indebtedness, principal and interest of \$75,024.98. This does not take into consideration the expenses of his protracted, defiant and unnecessary litigation. These consisted of the compensation of the receivers, commissioners, stenographers, and the like, and amounted to \$7,408.20. This made his total indebtedness at that time \$82,433.18, and the disputed claims of the solicitors for the plaintiffs, Hall & Wimberly, and his own solicitor, Alexander Proudfit, which were yet unprovided for. After the sale his taxes on the property ceased. These were now to be paid by the purchasers. In the meantime, interest had accumulated pending his appeal from the order confirming the sale to the amount of about \$6,000. Deducting this from his total indebtedness, including the expenses paid the officers of the court, in order to ascertain what he owed at the time of the sale, and we find that the sum was \$76,433.18.

Nor should it be forgotten that only 5/7 of the proceeds of the Kimball House property, which brought \$21,500, were available to creditors. Of this and of the costs of the proceeding, which were carefully and judicially ascertained, Mr. Felder obviously took no account. And he has also taken no account of the interest which rapidly accumulated on the sum total of the indebtedness after the sale of 1909.

Mr. Felder is equally in error in his statement (Stenographic Record, p. 1862), that at the time of the sale in 1909, "there was something like thirty-three thousand dollars in the coffers of the court." A reference to the record will easily show that four years before, namely, June, 1905, \$10,880 had been taken out of the "coffers" by consent, and had been paid into the "coffers" of the Scottish-Ameri-

can Mortgage Company. This left in the "coffers" aforesaid only \$22,120. Of this 2/7, or \$6,320 was being carefully preserve in the "coffers" for Mrs. Jennings and Edison Huff, and was not available for creditors, so that there were only about \$15,000 for the creditors in the "coffers" at that time.

Much has been said by Mr. Felder that the property of Mr. Huff at the time of the filing of the bill, and at the time of the decree, was of greater value than the amount of his indebtedness. It is unfortunate then, for him, that he would not pay his indebtedness. Mr. Felder says he was solvent, and he doubtless has in mind the definition of insolvency as provided by the bankruptcy act, namely:

"A person shall be deemed insolvent within the provisions of this act whenever the aggregate of his property shall not, at a fair valuation, be sufficient in amount to pay his debts." (Sec. 1. par. 15.)

But not only has this definition of insolvency been much criticised (Collier on Bankruptcy, 9th Ed., p. 9), but it is thought to put creditors at the mercy of their debtors. (*Idem.*)

This, however, is not a bankruptcy case, although widely published as such. It is a creditors' suit in equity. Its chief basis is not insolvency, but the inability of judgment creditors to subject the debtor's property by ordinary legal remedies. This is plain enough. But if it were otherwise, a far loftier tribunal than that in which Judge Speer presided, has assumed the responsibility. The Circuit Court of Appeals in this case (151 Fed., p. 563) declared:

"Where property of a judgment debtor is so encumbered by liens and taxes that such lien cannot be effectively enforced by executions, the creditor may maintain a suit in equity for the adjustment of the rights and priorities of the several lien holders."

It follows that even though Huff had been as rich as Croesus, had he continued to refuse to pay his judgment

debts, the remedy recognized by the Circuit Court of Appeals of this Circuit would have been available to his creditors.

Much has been said about the fee of Messrs. Hall & Wimberly. This fee to the uninformed would seem large. But the observant will consider the stubbornness and continuity of the defense, the reiterated appeals, the complexity of the litigation, the tremendous expenditure of effort on the part of counsel, and the sum of more than one hundred thousand dollars brought into court. Such experienced witnesses as Judge John P. Ross, now Solicitor-General, James L. Anderson, attorney for the largest creditor, and others, who might be mentioned, testified before the Master that ten thousand dollars would be reasonable compensation. This upon the theory that the services of complainants' counsel had inured to the benefit of all creditors participating in the result of the litigation, it was held should be paid out of the fund brought into court for distribution. This had been the familiar practice, but it was reversed and an entirely new rule adopted by the Circuit Court of Appeals. However, Senior Circuit Judge Pardee, long experienced on the bench, indeed, now the Dean of all Judges of the United States Courts, dissented. Thus we see Circuit Judge Shelby and District Judge Maxey, on the one side, and Senior Circuit Judge Pardee and District Judge Speer on the other side of this interesting question. We refer to the authorities cited by Judge Pardee in his dissenting opinion, which will convince the fair-minded that if Judge Speer was in error, it was an error most natural, and one into which many other courts had also fallen. (See 195 Fed., p. 430.)

Mr. Felder also complains (Stenographic Record, p. 1854), that just before the final decree was entered "we asked to be allowed to file a cross bill against the Scottish-American Mortgage Company, and the court refused to allow it."

This ruling was also reviewed by the Circuit Court of Appeals (151 Fed., 566). The action of Judge Speer was

sustained. The Court of Appeals in its opinion declaring: "The learned Circuit Court we think properly exercised its discretion in refusing to permit the cross bill to be filed under the circumstances of this case."

The complaint that no interest was allowed on the fund in the registry of the court is elsewhere discussed in this defense, and that discussion will not be here repeated.

There remains only to consider the alleged delays in this protracted litigation. The most critical scrutiny of the record will show that none of these are fairly chargeable to Judge Speer. The first delay was in the perfection of the pleadings, the second, in the taking of testimony. During this period fifteen applications for extension of time were made by the parties, many were made by Mr. Huff himself, and in no case was any objection made save by the court, and in each instance cause was shown for such extension. All through the record it will appear that Judge Speer was attempting to speed the cause. (See Huff Record, p. 131.) Because Mr. Talley, first appointed examiner, had other engagements as court stenographer, his appointment was revoked, and another examiner appointed. A considerable delay is also ascribable to Mr. Felder's legislative duties to the State. Such services are deemed so vital to the general weal, that now by Act of the General Assembly the attendance of members on its deliberations is made a legal excuse from their attendance upon the courts.

Other and less excusable delays were occasioned by appeals of Mr. Huff from the final decrees; that they were finally unsuccessful we have seen, but in the meantime as the result, three years and three months elapsed while the case was in the appellate courts. During this period the interest on the indebtedness and the accruing taxes accumulated to over eleven thousand dollars. Again five months were lost because of Huff's unsuccessful appeal from the decision confirming the sale of the property, and eleven months more pending the appeal of the Hall & Wimberly fee. An effort was made to have the fund distributed in part, reserving a sufficient sum in the registry to pay this

fee if it should be finally allowed as directed by the court. This would have been a great relief to creditors, but to this also Huff objected through his counsel.

Thus we have seen that four years and seven months of delay was caused by Huff's appeals. Finally, on May 1, 1913, a large share of the fund in the registry of the court was distributed by decree. But several appeals were at once entered, which have prevented the distribution of the balance, and although eight months have elapsed, these have not yet been argued in the appellate court.

There is thus presented the singular anomaly of a Congressional investigation of a case which is yet pending and undetermined in the appellate courts having jurisdiction.

A scrutiny of the record will further show that the decisions of Judge Speer were rendered often with great promptitude, always with reasonable promptness, and the testimony of the clerks and other officers of the court will show that again and again he protested against the delays, and from the bench declared them to be a reproach to the administration of justice. Save these delays, for which he is in no sense responsible, it is respectfully submitted that the case throughout is most creditable to the administration of justice in the United States Court for the Southern District of Georgia. Creditable for the humane and successful effort of the Judge to save a remnant of his fortunes for this aged debtor, whose desperate and uncalled for malignity was not even suspected; creditable because of the kind provision made for his support; creditable because notwithstanding his widespread calumnies, save a temperate statement made in declining to try the rule where he had been cruelly malignant, the Judge has borne in silence the libels which malice and conspiracy have spread throughout the length and breadth of the land, creditable because of the recovery and rehabilitation of an estate heavily encumbered and at first hopelessly insolvent.

Perhaps the greatest master of modern fiction devoted a noble effort of his genius for the reform of that English Court of Chancery where Thurlow, Erskine and Eldon sat.

In the famous suppositious case of *Jarndyce vs. Jarndyce*, he makes an admiring solicitor say: "that on numerous difficulties, contingencies, masterly fictions, and forms of procedure in this great cause, there has been expended study, ability, eloquence, knowledge, intellect, Mr. Woodcourt, high intellect. For many years, the—a—I would say the flower of the Bar, and the—a—I would presume to add, the matured autumnal fruits of the Woolsack—have been lavished upon *Jarndyce* and *Jarndyce*. If the public have the benefit, and if the country have the adornment, of this great Grasp, it must be paid for in money, or money's worth, sir."

"Mr. Kenge," said a friend of his client, "Excuse me, our time presses. Do I understand that the whole estate is found to have been absorbed in costs?"

"Hem! I believe so," returned Mr. Kenge. "Mr. Vholes, what do *you* say?"

"I believe so," said Mr. Vholes.

"And that thus the suit lapses and melts away?"

"Probably," returned Mr. Kenge. "Mr. Vholes?"

"Probably," said Mr. Vholes.

By contrast, what, it may be asked, is the result in this American Court of Chancery? The estate has been redeemed; its value far more than doubled; the creditors have been largely paid, and when the pending appeals are disposed of the others will be paid; all the defensive and dilatory expedients of a most protracted, unjustifiable, and unnecessary defense have been slowly but surely overcome by the majesty of the law. All costs and expenses have been righteously ascertained and have been or will be fully paid. Every dollar accounted for. Every creditor will be paid in full and unless the veteran litigant shall extend the remnant of his life in idle and costly appeals, there will have been accomplished the purpose the court has cherished from the first, to save for him from the remnant of his estate, enough to enable him to spend his last days in comfort.

KING LOAN.

Mr. W. E. Simmons testified (Stenographic Record, p. 730) :

I took the order dismissing my cases, and called on Mr. King for the unconsumed portion of my fees (costs) * * * Well, he was rather embarrassed, and he said, "Mr. Simmons, I haven't got the money." I said, "You ought to have it. It is a trust fund put in here and you ought to have it." Then he said, "Judge Speer has it." "Well, what are you going to do about it?" I said. He said, "Well, I cannot pay it now." Then I finally took his note for the money and he paid it along, a part of it at a time, and before he died he had paid me back all of it.

The Chairman: How much did this amount to, Colonel, do you remember?

Mr. Simmons: I cannot say. It was \$1,000 or \$1,200, perhaps a little more. He was a year or two in paying it off. He paid me money as fast as he could get it. I understand—I do not know this of my own knowledge—I understand that Judge Speer borrowed the money from him and paid it back to his widow after the Clerk's death. I have been informed so by prominent members of the Bar.

On cross-examination he testified (Stenographic Record, page 54) :

Mr. Callaway: When was this that you say Mr. King told you that Judge Speer had the money that you had deposited to cover fees?

Mr. Simmons: It was the very day I dismissed my cases down there. The records will show the date. I do not know now.

Mr. Callaway: Was it as early as 1890, or after 1890? Was it after the Gay case?

Mr. Simmons: No, it was not. I had dismissed my cases in Macon before the decision in the Gay case, and some

time after I dismissed my cases pending in the Eastern Division at Savannah. It was some time after I dismissed these at Macon.

(The Gay case was tried in Macon in January, 1888, 33 Fed., 636.)

The cost records of the Clerk at Macon show that the total amount of costs unearned refunded to W. E. Simmons, attorney for the New England Mortgage Security Company, and other loan companies, on the dismissal of his cases at Macon, was \$226.68, and that these costs were paid to Mr. Simmons by the Clerk prior to April 23, 1888, except \$10.70, which was paid October 3, 1891.

The records of the Clerk at Savannah show that the total amount of unearned costs refunded by the Clerk to W. S. Simmons on account of cases dismissed by him at Savannah was \$172.43, and that all of these costs were repaid to him between the dates of December 8, 1888, and January 18, 1889; this latter fact appearing from the statement furnished by the Clerk, taken from the records at Savannah. I refer to Stenographic Record, page 1698.

Mr. Simmons' testimony continued on page 755, as follows:

Mr. Callaway: You also stated that you understood Judge Speer had paid Mr. King's widow?

Mr. Simmons: I understood so.

Mr. Callaway: Do you not know that Mr. King was a bachelor? You mean Mr. King who was Clerk of the court at Savannah?

Mr. Simmons: Yes.

Mr. Callaway: Do you know that Mr. King was a bachelor and never was married?

Mr. Simmons: I do not know about that, but I know he had legal representatives. A prominent lawyer at Savannah told me that * * *. It was put on me directly in Savannah who said that after King died he had made arrangements with a gentleman in Savannah to let Judge Speer have the money to pay back into the estate.

The witness was then shown the following papers deal-

ing with the making of the King loan, and the payment thereof:

Bethany, Brooke Co., W. Va., August 17, 1886.

My Dear Judge: I enclose herewith the Bank of Wheeling dft on New York for \$492.20, which added to your receipts which I have, dated May 18, 1886, for \$707.80, makes the aggregate \$1,200.00 as contemplated. I enclose also a note for the amount in accordance with your suggestion, which you will please sign and return to me here.

I have made no other average of the two amounts except to antedate the note a few days which will make the first quarterly installment due Nov. 5, 1886.

I regret the slight delay in sending the draft which has been wholly unavoidable.

For some reason, I failed to get from Col. Wade your Washington address, but I do not think it of vital importance, providing you are still in that city. I shall write Col. Wade that I have addressed you at Washington, D. C.

I am,

Yours truly,
H. H. KING.

Hon. Emory Speer, Washington, D. C.

I will return your receipt when I hear from you.

NOTE.

\$1,200.00

Savannah, Nov. 8, 1886.

For value received, I promise to pay H. H. King, or order (\$1,200.00), twelve hundred dollars with interest at 6 per cent. (six) from the 5th of August, 1886. Payments to be made from this date monthly of fifty dollars each, or quarterly of \$150, one hundred and fifty dollars each.

EMORY SPEER.

LETTER.

Macon, Ga., April 10, 1890.

My Dear Friend: Referring to your kind telegram of this date, I write to request you to draw at sight on me and pay for me a note I owe to Mr. H. H. King, the Clerk of the United States Court. It is, I think, for \$1,200.00 (one thousand twelve hundred), with interest from the 5th of August, 1886, at 6 per cent. There may be a small credit,

but I am not sure. Please calculate the interest for me, and if you can do so, draw on me at sight cashing the draft through any of the banks here for the amount of principal with interest added and I will pay the draft on presentation. *The money awaits it.* Mr. King, I presume, will have the note, which I beg you to forward to me. Begging your kindly attention to this matter the day you receive this, I am, with great good will and esteem,

Very sincerely yours,
EMORY SPEER.

If convenient, draw through Exchange Bank, or First National Bank of Macon.

Savannah, Ga., April 11th, 1890.

Hon. Emory Speer, Macon, Ga.

Dear Sir: Immediately upon receipt of your letter this morning, we called on Mr. King and took up your note—principal \$1,200.00, interest from August 5th, 1886, at 6 per cent., \$265.20—a total of \$1,465.20. There were no credits. We enclose the note herein. As requested by you, we have this day drawn a sight draft on you for \$1,465.20, being the total paid out by us for your account. Gladly serving you,

We remain very truly,
CHARLTON & MACKALL.

Endorsement:

Charlton & Mackall paid Mr. King \$1,465.20 for Judge Speer. (Letter explains.)

DRAFT.

Savannah, Ga., April 11, 1890.

\$1,465.20.

At sight pay to the order of ourselves fourteen hundred and sixty-five 20/100 dollars. Value received and charge to account of

CHARLTON & MACKALL.

To Hon. Emory Speer, Macon, Ga.

Endorsement:

Pay to the order of Savannah Bank & Trust Co.

CHARLTON & MACKALL.

Pay J. W. Cabaniss, Cashier, or order for collection
acct. of Savannah Bank & Trust Co.

JAS. H. HUNTER, Cashier.

The following endorsement was on the back of the note (Stenographic Record, p. 1693) :

"Paid in full this 11th day of April. Principal, \$1,200,
interest, \$265.20. H. H. KING."

After seeing the original letters, note, and draft covering this transaction, the witness stated that he was unable to identify Mr. King's signature or writing, and further stated that he did not know that Mr. King had died unmarried in 1904, but supposed he was married. He further stated that his information was that the loan was settled up with Mr. King's estate.

In response to questions from the Chairman (Record, p. 766), Mr. Simmons stated that he did not intend to say that the transactions referred to in the letters, note, and draft between H. H. King and Judge Speer, referred to the money that he had paid to the Clerk, and that it may have been a different transaction; that there was nothing in either of the letters, note, or draft introduced in evidence to indicate that they were the same transaction, and that there was nothing in the transaction of the loan referred to in the correspondence, note and draft above set out indicating that it had the remotest connection with his deposit; that he could not swear that any money he paid King, or into court, went to Judge Speer, and that he knew nothing except what Mr. King had told him.

P. W. Meldrim (Record, p. 1658) testified as follows:

"He (King) told me, in substance, that he had let Judge Speer have \$1,200 out of the register of the court, that demand had been made upon him, Mr. King, for the money, and that he could not get it out of Judge Speer. I told Mr. King, 'That is all right, you won't have any trouble in getting the money.' I did not tell Mr. King that there was a statute on the subject, but I said, 'You write Judge Speer and tell him you must have the money.' * * * On the 11th day of April, 1890, about that date, I think that was the date—Mr. King came to my office very radiant and happy, and said he had gotten his money. I said, 'Well,

I did not doubt but what you would get your money.' I asked him how he got it, and he said that on the 11th day of April, 1890, Mr. W. W. Mackall, of the law firm of Charlton & Mackall, asked him if he had a note signed by Judge Speer, that he replied that he had, and that Mr. Mackall then said, he wanted to buy it. Mr. King added that he smiled then, and Mr. Mackall asked, 'Don't you think he will pay me?' Mr. King declared that Mr. Mackall then paid the note, which he said amounted with interest to \$1,460.20, and this money Mr. King said, he deposited in his bank in Savannah on April 11th, 1890."

The witness further stated that he had made a written memorandum of the transaction and the incidents at the time.

On cross-examination, beginning on page 1690, Mr. Meldrim stated that Mr. King had never shown him Judge Speer's note, and that he would not recognize Mr. King's signature in the course of the years, and that he thought that Mr. King died perhaps in 1900, and that he did not think Mr. King was a married man, and he never knew of his family. He recognized Judge Speer's signature on the \$1,200 note, dated November 8, 1886, a copy of which appears in the record and is quoted above. He also identified Judge Charlton's signature to the draft drawn on Judge Speer for \$1,465.20 in payment of the note, and expressed the opinion that this was the transaction which he had testified Mr. King spoke to him about. He could not remember that Mr. King had told him that this money loaned to Judge Speer was taken out of the registry of the court, and did not have the slightest knowledge of whether Judge Speer owed Mr. King a dollar or not, where the money came from, or whether it was cost money or not.

"I rather thought afterwards, from a conversation that I had in June last year with Judge Simmons, that it was cost money that had been deposited, but that is purely hearsay."

He stated that Mr. King said that demand had been made upon him for the money in the registry of the court, and that

he didn't have it, that he had let Judge Speer have it. The witness also stated that he understood Mr. Simmons to say that the amount of costs paid back to him was \$1,200, but that Mr. King had never said a word to the witness about Mr. Simmons, and that this was the only transaction of borrowing or loaning between Mr. King and Judge Speer that he had ever heard of, or knew anything about, unless it be the Simmons business, and that he knew nothing about the Simmons matter except what Mr. Simmons had told him.

W. W. Mackall (Record, page 1734), identified the letter written by Judge Speer to Charlton & Mackall, from Macon, April 10, 1890, which appears above; and the reply of Charlton & Mackall to Judge Speer, which appears above, and in the Record, page 1736, enclosing the note; also Judge Speer's letter to W. G. Charlton, dated April 12th, 1890 (Record, page 1737), as follows:

April 12, 1890.

My Dear Sir: I am due you my cordial acknowledgements for the promptness with which you arranged for me my debt to Mr. King. It had been treated as a demand note & Mr. King having for the first time on Thursday intimated that its payment was desired, I was exceedingly anxious to pay him with promptitude, this your courtesy enabled me to do, I have paid this morning your sight draft for \$1,465.20, & I again thank you for your kindly consideration.

I am with high regards,

Very truly yours,

EMORY SPEER.

Hon. W. G. Charlton."

Mr. Mackall further testified that upon receipt of Judge Speer's letter, he looked up Mr. King, and that the telegram referred to in Judge Speer's first letter was merely a telegram to Judge Charlton asking him if he would be in Savannah the next day, and Judge Charlton replied that he would be there, and would be glad to serve him.

The only other testimony on the subject of the King loan appears in the testimony of Judge Speer, in response to the inquiry as to the transaction with Mr. King, and appears in

his testimony (Record, p. 2513), which is fully corroborated by the documentary evidence quoted above, and appear in the Committee's record.

It seems hardly necessary to comment upon the inconsistencies between the testimony and inferences of Mr. Simmons and the undisputed facts shown by the above recited written instruments and facts as disclosed in the records of the Clerk of the court at Macon and Savannah. In the first place the total amount of costs refunded to him on the dismissal of the cases at these two places was \$399.11, and all of these costs were repaid to him by the Clerk and so entered on his docket long prior to 1890. So that the King loan to Judge Speer could not possibly have had any effect on Mr. King's alleged embarrassment in returning these costs to Mr. Simmons.

The letter from Mr. King, written from Bethany, W. Va., in August, 1886, transmitting a New York draft on a Wheeling Bank for \$492 of this loan, indicates clearly that at least this part of the loan did not come from costs or the registry of the court, and the amount of Col. Simmons' costs to which he was entitled to a refund being \$399.11, could not possibly have constituted any considerable part of the remaining \$700 of this loan. Mr. Simmons testified that the costs were paid to him from time to time by Mr. King in small amounts. This is not corroborated by the written records of the dead Clerk. Mr. Simmons' annunciation, based upon hearsay, of Judge Speer's paying this loan back to Mr. King's widow after Mr. King's death, seems a bit inconsistent with the undisputed fact that Mr. King died an old bachelor, and was never married, and that the loan was completely paid up through Charlton & Mackall in April, 1890, and that Mr. King did not die until 1904.

Mr. Meldrim's suggestion, based in like manner upon hearsay, that Mr. Mackall undertook to "buy" the note from Mr. King is not borne out by the entry "paid" in Mr. King's handwriting on the back of the note, dated April 11th, 1890; nor by the statement of Mr. Mackall that the note was paid by his firm with the proceeds of a draft

drawn by them on Judge Speer, which was promptly paid.

How much of these suggestions and innuendoes on the part of Mr. Simmons and Mr. Meldrim arose out of the conversation between these two parties referred to in the testimony of Mr. Meldrim, and vaguely referred to in the testimony of Mr. Simmons, is not known.

In addition to the above, it is deemed proper to state that funds placed in the registry of the court cannot be withdrawn without an order of the court, and checks signed by the Judge and countersigned by the Clerk. The provisions of the law requiring a complete record of all these transactions. The funds in the registry of the court are from time to time duly checked and audited. These records, together with the Deputy Clerk at Savannah, who kept the same at the time, were accessible to the Committee, and offered to the Committee for the purpose of ascertaining whether any funds had at any time, particularly during the time of the King loan, were ever withdrawn from the registry of the court; also the records of the bank at Savannah which was the registry of the court. Neither of these records show that any funds which could have possibly constituted any part of the King loan were taken or extracted from the registry of the court and subsequently returned thereto during the period from November, 1886, when the loan was finally closed by note, until April, 1890, when it was finally paid as stated above, or at any other time.

In the course of Judge Speer's testimony before the Committee, pointing to Honorable Marion Erwin, who was sitting in the immediate presence of the Committee, Judge Speer said, as nearly as can be recalled:

"There sits Mr. Marion Erwin, who was the Clerk of the District Court in 1886, and the Deputy Clerk of the Circuit Court. With all his skill as bookkeeper and accountant, he kept the accounts of the Clerk and with the registry of the court."

Pointing to Mr. Geo. W. Owens, he said:

"There sits Mr. Geo. W. Owens, the Standing Master

in Chancery, who, although one of my counsel, is a man of high honor. It was his duty practically every term to pass upon the accounts of the Clerk in the registry of the court."

"The officers of the Merchants' National Bank, the registry, a bank whose doors it happens I have never entered, are here. Their books are here, and these gentlemen and this proof will show that never in my life did I touch a dollar placed in the registry of the court."

W. E. SIMMONS AND THE CORBIN BANKING COMPANY LOANS.

W. E. Simmons (Stenographic Record, p. 723), after testifying to his dislike and bitterness toward Judge Speer, antedating and continuing through his entire encumbency on the bench, complained of Judge Speer's ruling against him on the question of usury in the case of New England Mortgage Security Co. *vs.* Gay, reported in 33 Fed., 636. He says that prior to the trial of that case in January, 1888, he had brought a great many suits in the United States Courts at Macon and Savannah, to foreclose mortgages against the borrowers on farm lands. His clients, and the plaintiffs in these cases being the New England Mortgage Security Co. and several English and Scottish Loan Companies. He says that these loan companies covered the State pretty well, and there were so many foreclosure suits that it was more convenient for him to bring all of them in the United States Courts than in the Superior Courts of the various counties. The plea of usury was set up in the case of New England Mortgage Security Co. *vs.* Gay, and from the report of this case, the nature and character of the loan business as carried on by the Corbin Banking Company in this State will be readily perceived. Through a printed contract furnished by the Corbin Banking Company to its local agents in Georgia, and which Gay was required to sign as a preliminary step in securing his loan, the Corbin Banking

Company and the local agent were designated and constituted the agent of Gay, the borrower, presumably for the purpose of obtaining the loan, but in reality for the purpose of plausibly permitting the Corbin Banking Company to retain and withhold from Gay, the borrower, twenty per cent. of the principal of the loan when the money should be forwarded on the mortgage which Gay was required to execute on his farm. The principal of Gay's loan was \$8,500, secured by a mortgage on farm lands valued at \$22,000, and the security was pronounced "creamy" by the Cashier of the Corbin Banking Company. Gay claimed that he actually received only \$6,443 of the proceeds of the \$8,500 loan. Gorman, the local agent, says that Gay received \$6,800, and that only \$1.700 was withheld. There was abundant evidence of the close connection and identity of interest between the Corbin Banking Company of New York, the loan agency corporation, and the New England Mortgage Security Company of Boston, the plaintiff and alleged lender and owner of the loan. It did not appear where the Corbin Banking Company had ever rendered any services to Gay in the loan transaction, but there was much evidence, both oral and written, of the active services which the numerous agents and employees of the Corbin Banking Company were continually rendering to the New England Mortgage Security Company in connection with this and other loans. Among other letters appearing in the record is the following from one Tussey, who seemed to have been an agent of the Corbin Banking Company located in Atlanta, Ga., and whose duties seemed to be to prod the local agents and the slow and dilatory borrower in the payment of interest:

"Atlanta, Ga., December 18, 1884.

O. D. Gorman, Esq.,

My Dear Sir: On my delinquent list I find the following: Schley County, No. 35144, Jacob M. Gay; Ellaville, and \$468.44, and now I want you to go for this 'old cus' in a good shape, and see that he 'ponies up' at once. We can't afford to have him slip up on this trifling amount in an \$8,500 loan. If he cannot get there on a small amount like this, what in the Devil is he going to do next year.

Yours truly,

S. D. TUSSEY."

The undisputed facts of this case not only justified, but required the Judge to submit to the jury trying the case the question as to whether the printed form of contract which Gay had been required to sign constituted the Corbin Banking Company his agent, was not a mere sham or a pretence and device to evade the usury laws of Georgia, and make the withholding of \$1700 of Gay's borrowed money by the Corbin Banking Company a plausible payment to his own agent for a pretended service not rendered.

Judge Speer presented the facts of this case fully to the jury, and left them to say whether the transaction was usurious under the Georgia statute. They found for Gay, and that the loan was tainted with usury, and it is difficult to see how they could have found otherwise. Mr. Simmons, who was of counsel for the loan company in that case, complains that Judge Speer declined to recognize a decision which had shortly prior to the trial of this case been rendered by the Supreme Court of Georgia, in what is known as the Merck case, where apparently a commission of only \$80 had been retained by the loan agent, and where the transaction as disclosed in the Merck case was held by the Supreme Court of Georgia not to be usurious. The Merck case had been decided upon a very different state of facts from that disclosed in the Gay case then on trial, for instance the commissions in the Merck case was only \$80 for the service rendered, whereas the commission in the Gay case was certainly not less than \$1,700, without any difference as to the actual amount of service rendered. In the Merck case it was made to appear that the services rendered to the borrower justified the charge of \$80. In the Gay case it did not appear that the Corbin Banking Company rendered any service to Gay, but on the contrary the interests of the Corbin Banking Company and the lender, the New England Mortgage and Security Co., were apparently identical and all the services rendered by the Corbin Banking Company in connection with the transaction was to the lender. The record in this case discloses that Mr. Gorman, the local agent of the Corbin Banking Company, who rep-

resented only five counties in Georgia, had at the time the Gay case was tried placed loans on farm lands in these five counties for Mr. Simmons' clients through the Corbin Banking Company in the aggregate of \$200,000, and that the commissions which had been withheld by the Corbin Banking Company on these loans had amounted to \$40,000, leaving to the borrowers out of the gross amount of these loans only \$160,000. This, taken in connection with Mr. Simmons' testimony, that he was representing through the Corbin Banking Company, loan companies which pretty well covered the State, and which at that time contained 137 counties, will give some idea as to the enormous profits which the Corbin Banking Company had been making in these usurious transactions carried on in this State. When it is remembered that all of these loans carried a provision for the payment of 10 per cent. attorneys' fees, secured by the mortgage, some idea of the immense financial interest which Mr. Simmons had in these numerous law suits will be appreciated. It is not unnatural under such circumstances that when he found that Judge Speer proposed to submit the facts in all of these foreclosure proceedings, where the question of usury was raised, to the jury trying the case, that Mr. Simmons determined, notwithstanding the convenience of the Federal Courts, to dismiss his cases in the Federal Courts and subject himself to the inconvenience of foreclosing his mortgages and enforcing his usurious contracts in the State Courts.

In accordance with his testimony this is exactly what he did, viz: After losing the Gay case he proceeded to dismiss all his cases where decrees had not already been taken and where pleas of usury had been filed, first dismissing those pending at Macon, and shortly thereafter dismissing those pending at Savannah. From the dockets it appears that all of these cases were dismissed in 1888 and not later than the Spring of 1889, and the Clerk's ledger shows that the amount of unearned cost returned to Mr. Simmons in the cases which he had filed and dismissed at Macon, amounted to only \$226.68, all of which was returned prior to April 23,

1888, except one item of \$10.70, which was returned October 3, 1891, and those filed and dismissed in Savannah only to \$172.43, all of which was returned to him at the time the cases were dismissed, prior to the 18th of January, 1889, the total amount of cost returned being \$399.11.

The Gay case was taken to the Supreme Court of the United States by Mr. Simmons, and the decision was affirmed upon the ground that the jurisdictional amount involved did not make the case subject to review by the Supreme Court. 145 U. S., 123.

Mr. Simmons' apparent effort to show that he had difficulty in dismissing his untried cases in the United States Courts, at Macon and Savannah, though highly colored, apparently for the purpose of exaggerating his own independence and overbearing conduct toward the Court, failed to show any real obstacle presented by the Court to the speedy dismissal of his cases and the prompt return to him of his unearned cost by the Clerk.

Mr. Simmons complains in another loan company case, viz, the New England Mortgage and Security Co. *vs.* Annie P. Tarver, where the litigation lingered along through several years. He seems to make an effort in his testimony to show that in this, as in the Gay case, his client, the loan company, was treated unfairly in Judge Speer's Court, and that the Judge's bias was in favor of Mrs. Tarver, but no fact is stated upon which any such criticism can be justly or fairly made, and the decree which he himself states was a consent decree finally rendered his client, apparently surrenders all of the judgments and mortgages against Mrs. Tarver and gives to her \$8,750 in cash. (Stenographic Record, p. 734.) He complains, however, that though the decree was consented to by counsel representing all the parties Judge Speer declined to sign the decree until Mrs. Tarver appeared and expressed her assent to the decree. The Committee's attention is called to the fact that the record discloses that in this litigation between the loan company and the Tarvers there had been a traverse of a return of service, and it appeared that in one instance at least the

wrong Mrs. Tarver had been served. If there was to be an end of the litigation it is difficult to see how Judge Speer is to be criticised for hesitating about signing the decree at the instance of counsel in the absence of the most important party to be affected, and when that party was a married woman and her property rights were to be finally determined by the proposed decree. Even if the Chancellor is not required in such cases to fully advise such a litigant before him, instead of being reprehensible, it would seem that the caution and solicitude of Judge Speer in this instance should be commended.

The injunction against the writ of assistance in the Tarver case granted by Judge Speer in January, 1892, was upon which eminent counsel engaged in this case differed. can be said of it was that it involved a question of practice upon which eminent counsel engaged in this differed. Judge Speer's order requiring the writ to issue only upon the order of the Judge, after notice to all parties, seemed to be in the interest of fairness. While the reversal by the Court of Appeals was a strict technical interpretation of the rule of practice, at most it was only a reversible error.

In reference to this case, the attention of the Committee, is specially called to the testimony of Judge W. D. Nottingham, (Stenographic Record, p. 1002) who it appears was one of the attorneys for Mrs. Tarver in this litigation, where the other side of this loan case, from the standpoint of one of the victims of the usury practice in Georgia by Mr. Simmons' clients, is narrated, and from whose account it appears that in addition to the large money recovery described by Mr. Simmons in the consent decree, that Mrs. Tarver, as a result of this litigation, saved over six hundred acres of her land.

Mr. Simmons charges (Stenographic Record, p. 746) that J. W. Cabaniss was Receiver in the Tarver case, and did very little except to take the rent notes, and that when the case was terminated, the costs being put by the Court on his client, the Receiver was paid for his services \$1,000, which he regarded as excessive. The Committee's record

does not disclose how much land was involved in this litigation, but as the original loan was stated to have been \$35,000, and it appears that these loan companies only advanced approximately one-third of the value of the security, it is a fair inference that the land involved in the litigation was of over \$100,000 in value, and as Mr. Simmons complains that the litigation was long drawn out, the Receiver evidently had charge of this landed estate and was charged with the duty of renting it, looking after the tenants and collecting the rents for a number of years, in view of these facts it can hardly be contended that a compensation of \$1,000 to the Receiver for this service was excessive.

Mr. Simmons also complains of his experience in another case, that of the American Free Hold Land Mortgage Company of London *vs.* Thomas. His complaint being described in his own language, (Stenographic Record, p. 739) as follows:

“When I began to argue the case Judge Speer picked up his pen and went to writing and paid no more attention to me than if I had been a post. I felt very much offended and I called him down. I said: ‘Will you please lay down that pen until I get through? I treat Courts with respect and I demand it of you.’”

If Mr. Simmons is literally describing his conduct on that occasion it is respectfully submitted that his manner is not only extremely discourteous, but would have justified the Court in punishing him for contempt. In fact if he states truthfully and accurately what occurred on that occasion the criticism against the Judge would seem to be that he neglected an opportunity to enforce due respect to the Court. In fact Mr. Simmons' conduct as described by himself throughout this transaction is reprehensible in the highest degree and discreditable to a prominent member of the Georgia Bar.

The difficulties which he attempts to describe in the same case which he had in getting an appeal from the decision of the Court and which difficulty he claims finally forced

him to go to New Orleans to obtain the appeal, as it is highly colored by the account he gives the Committee, was apparently intended to magnify his own courtesy and disrespect toward the Court rather than to state any actual injustice done to him or his client. He succeeded in getting his appeal and he says reversed Judge Speer's decision in the Thomas case. If so no harm or injustice was done to his client, and when one considers the boastful spirit with which he now, after twenty years, describes his gross misbehavior and courtesy toward the Court, it is difficult to conceive how he could have expected the Judge under the circumstances to have dealt with him as a practicing attorney otherwise than in the most formal manner.

COMPLAINT OF W. H. BURWELL.

The grievances of this gentleman is (Stenographic Record, p. 975), that on one occasion "by agreement of counsel," he went to Toxaway, N. C., to appear before Judge Speer; that the hotel was crowded and the rates exorbitant; that he was kept at Toxaway ten days because Judge Speer would only hold court about two hours a day. It appears that this was in August, 1906. The trial of Green and Gaynor for the embezzlement of over two millions of dollars had lasted from January until May. As a consequence the civil dockets in the several divisions had become congested, and notwithstanding the fact that at that season of the year Judge Speer always suffers severely from hay fever, he had agreed to hear a number of equity and admiralty cases during his vacation, the lawyers interested being advised that he would sit for only a short time each day, as his health required this. That under the circumstances the Judge was entitled to a vacation seems clear. It was optional with Mr. Burwell and other counsel whether or not they should appear at that time and place. They agreed to appear. The fact that during his vacation and painful indisposition

the Judge would attempt to hear important causes at the request and agreement of counsel, either at Toxaway, Highlands, or Mount Airy, is surely not to his discredit. So important to the administration of justice has been this habit of Judge Speer, that for many years successive Attorneys-General have authorized payment for the traveling expenses and maintenance of the court stenographer so that officer might attend the Judge and report the hearings.

Mr. Burwell was asked by the Chairman if he knew anything that would tend to show favoritism on the part of Judge Speer. He replied "No." He, however, proceeded to narrate the following:

In the Mandel bankruptcy case a composition had been agreed upon, and Mr. Chas. Cork, stenographer for the Referee at Macon had put in his bill for \$90.00 for taking down the testimony. This was presented to the Referee. On objections before that officer the amount was reduced to \$45.00, but two days later the Referee allowed Mr. Cork the full \$90.00, saying that Judge Speer had ordered it. (Stenographic Record, p. 980.) This Referee is now dead. The record will disclose the facts following:

An involuntary petition was filed against B. Mandel & Son, and an answer filed by them. An order of reference was made to Alexander Proudfit, as Special Master, to take evidence and report on the issues. The report of the Special Master was filed on January 20th, 1906. The papers relating to the compensation of the stenographer have been filed with the Committee and are not accessible, but the controversy probably arose out of the contention of Mr. Cork that in hearings before a Special Master, in which capacity Mr. Proudfit was acting here, the stenographer is entitled to the usual fee of 10c per folio for taking down the evidence and 10c per folio for writing it out. This is the rule before a Special Master or any other Judicial officer. This the court doubtless regarded as controlling. This would account for the sum of \$90.00 allowed. Had, however, the Master been acting in his ordinary capacity as Referee, the

provision of the Bankruptcy law allowing 10c per folio for taking down and writing out would have applied.

The complaint of Mr. Burwell (Stenographic Record, p. 982) that in the bankruptcy case of Cawthorne, Judge Speer refused to appoint Arthur Hutchinson, the Sheriff of Hancock County, as receiver, is ascribable to the fact that Hutchinson was not only a defendant to a rule brought against him in that case, that an injunction was pending against him, but there were other reasons which made it not advisable that he should be appointed. Pope S. Hill, a member of the Macon Bar, received the appointment. That his compensation was proper is shown by the final order. (Stenographic Record, p. 988.) This was entered on December 5th, 1900. It recites that the bankruptcy estate amounted to \$1,232.16; that counsel had fixed their fees by agreement, but that Judge Speer disapproved the agreement and reduced the fee of the witness, W. H. Burwell, as agreed upon, from \$250.00 to \$175.00, and reduced the fee of the attorney for the bankrupt from \$125.00 to \$87.50. It was the effort of the court to be economical always, with the most gratifying comparative results as will appear from the annual reports of the Attorneys-General. The fee allowed Pope S. Hill, Receiver, was only about $3\frac{1}{2}\%$ of the value of the estate,—this was before the Act of Congress fixing the maximum of the fees of receivers in bankruptcy cases, and reference to the record of the case will disclose that the appointment of this gentleman and his compensation were amply justified.

GEORGE C. HALL CASE.

AKERMAN AND SMITH.

Mr. Akerman was asked to recall instances where Judge Speer had shown him disdain or contempt, or treated him

improperly, and referred to the case of the United States *vs.* Geo. C. Hall.

Mr. Akerman replies (Stenographic Record, p. 1091) : "His manner throughout the entire case was very abusive and insulting to me, I thought. I may have been mistaken, and it may have been super-sensitiveness on my part. The case was being conducted principally by Mr. John R. L. Smith, as Special Counsel."

Mr. Akerman says (Stenographic Record, p. 1092) : "The principal thing I noticed was he would interrupt my argument. I did not examine the witnesses myself. Mr. Smith did that. I remember particularly I went to show a signature across the back of a check to the jury through a magnifying glass, and he came down with his gavel 'Stop, Mr. Akerman, stop! that is manifestly unfair to the defendant.' I turned to him and I told him that I thought it was entirely proper, and I knew no rule against it. He said I had not introduced it in evidence. I told him I was not using it in evidence, but merely as an aid to the jury to see the signature under a magnifying glass."

Court adjourned and Mr. Akerman said he submitted several authorities, but that the Judge held that the glass could not be used. The case was a perjury case. Later another case, for concealing the assets of the bankrupt on the same evidence, was tried before Judge Grubb, and Hall was convicted.

When asked about the Judge's manner towards him (Stenographic Record, p. 1093) Mr. Akerman said: "It is very hard to describe manner; I took it he was trying to disconcert me before the jury, cross, irritable, interrupting me, telling me I couldn't do this, that and the other thing, in his usual suave manner."

Mr. John R. L. Smith was asked (Stenographic Record, p. 102) to describe the attitude and conduct of Judge Speer toward Mr. Akerman in the Hall case. Mr. Smith replied:

"Well, it was a disposition to sneer at everything that the District Attorney had to say, and to express disapprobation of all of his motions and to express a doubt and dis-

trust of the truth of all of his statements or suggestions made, agreements proposed, and matters of that kind. As I say, it is difficult to express or describe. I do not remember the details of anything in particular that was said. I do remember one incident, but I do not remember the statement or expression used in reference to that; that was with reference to the use of the magnifying glass before the jury."

Mr. Smith was asked (Stenographic Record, p. 104) if the same point with regard to the use of the magnifying glass was raised before Judge Grubb on the trial of the other Hall case, and he replied "I am not sure about that, I do not recall."

Mr. Smith was asked whether he knew of any personal estrangement between Mr. Akerman and Judge Speer about that time. Mr. Smith replied (Stenographic Record, p. 105) :

"Mr. Akerman's statement to me, that is all I have—was, that the Judge had turned democratic and wanted to get him a democrat for District Attorney, and had made up his mind for that purpose to run him out of the court, and was about to succeed in doing it, that he had not convicted anybody—well I do not remember, but in several months, he named a number of months."

Mr. Smith stated (Stenographic Record, p. 106) :

"The Judge's attitude toward me was not particularly attractive, but the impression was that it was entirely on the 'Old Dog Tray' principle."

The transcript of evidence on the first trial of Hall shows that Sam B. Hunter, the Notary Public, could not swear positively that an oath had been administered to George C. Hall when he signed his schedules in bankruptcy, and of course if no oath was administered Hall could not have been convicted of perjury.

The Committee will doubtless recognize that to convict on the indictment for perjury tried by Judge Speer much stronger proof was requisite than to convict on the indictment tried by Judge Grubb for concealing the assets of a bankrupt, yet, the final outcome of this most costly prose-

cution in which the District Attorney Akerman was reinforced by the Special Assistant Smith was a verdict of "not guilty" of perjury, a verdict of "guilty" with recommendation to extreme mercy for concealing assets, the jurors using capitals in writing this recommendation. So trivial was the case that the sentence save thirteen day's imprisonment was suspended by Judge Grubb.

The record of the trial will disclose that in the perjury case, the principal witness, a married man, had testified without shame, that on the day to which his testimony related he had in the morning betaken himself successively to several houses of ill fame in Macon. The Judge had disgust and doubt of this witness. It is possible this accounted for the manner about which Akerman "may have been mistaken" and "super-sensitive" and which Smith found "impossible to describe." Smith's statements that Akerman told him that the Judge had turned democratic and wanted to get him a democrat for a District Attorney is hearsay and incompetent, but its sinister purpose is obvious. The truth is, Akerman, while Assistant District Attorney, had been appointed Assistant Attorney-General. This would take him away from the District. For ten years the court had suffered from this evil, from such absenteeism on the part of the District Attorney, because District Attorney Erwin, during all that time, had been employed by the Department in the Greene and Gaynor matters. Finally the Judge wrote to Washington urging the appointment of a District Attorney who could remain in the District and attend to his duties. The supply of available legal talent among republicans in the district was not super-abundant, and the Judge did not hesitate to commend to the President either of six honorable democratic lawyers of that type which he felt would enforce the law. When, however, the Attorney-General wrote especially to ask if he would not commend Akerman also, Judge Speer wrote at once that he would do so with pleasure. It is due him to state that he was not then informed of Akerman's secret enmity and was not fully satisfied of his infidelity to the trust he yet holds.

It is a matter of record that there are about four hundred members of the Bar of the United States Court who reside and practice therein in the Western Division of the Southern District of Georgia. There are twenty-two of the finest counties of the State in that Division. They are the counties of Baldwin, Bibb, Butts, Crawford, Dodge, Dooly, Hancock, Houston, Jasper, Jones, Laurens, Macon, Monroe, Pike, Pulaski, Putnam, Sumter, Telfair, Twiggs, Upson, Wilcox and Wilkinson.

Here also are the cities and large towns of Milledgeville, Jackson, Eastman, Vienna, Sparta, Perry, Fort Valley, Marshallville, Montezuma, Oglethorpe, Monticello, Dublin, Forsyth, Barnesville, Zebulon, Hawkinsville, Eatonton, Americus, McRae, Jeffersonville, Thomaston, Irwinton and Abbeville. There, too, is Macon, with more than a hundred members of the Bar and more than fifty thousand people. The division itself as appears from the last census possesses a population of more than four hundred and twenty-six thousand. On the 18th of this month Judge Speer will have performed the difficult, delicate and often dangerous duties of a United States Judge for twenty-nine years. For nearly all of that time he acted both as Circuit and District Judge. When he was appointed, the Chairman of the sub-Committee was a lad of thirteen, and the other members scarcely older. To the lot of no Judge for nearly the life of a generation has it fallen the duty to try more weighty causes, civil and criminal, where the fiercest passions, often sectional, sometimes political, were made manifest. And yet with all these arduous labors in all that territory, and in all that time, with all the energy of a mighty executive department exerted for more than nine months, only three attorneys have been found to testify that Judge Speer had ever shown courtesy to counsel. These are Akerman, Smith and George S. Jones. Mr. Wimberly testified with warmth but his criticism was confined to the Jamison case, otherwise he said the Judge had treated him with great kindness and accorded him every right. The aged and impulsive Preston told the Committee of a trial twenty-one years ago

where a postmaster had issued money orders for more than \$2,000.00 in the name of his office boy and had pocketed the proceeds, and had sold stamps for a large amount on his own account and was accordingly convicted. But there Preston charged no courtesy and declared that such was his own conduct that the Judge ought to have put him in jail.

Besides two of these witnesses have toward the Judge all the hatred of the ingrate.

In the testimony of Jones, two incidents are mentioned. One was intended to be a kindly admonition, made at the Judge's home, to settle a case which Jones afterwards settled on the advice of the Circuit Court of Appeals. In the other his complainant was reviewed by the Circuit Court of Appeals on full exceptions and argument, and the action of Judge Speer by the unanimous court affirmed.

The Committee will observe that both Akerman and Smith refer to but one fact and that was when the Judge stopped Akerman in the Hall trial from handing a magnifying glass to the jury to scrutinize an indorsement alleged to have been made by the accused. As to this glass no witness was examined. As to its use, the power of its lens, its accuracy, no expert was offered. There was no opportunity to cross-examine. It was produced and handed to the jury for the first time during Akerman's argument. This the Judge thought and still thinks unfair to the accused. It did not appear that Akerman himself was an expert in the use of the glass. Facility in the use of the microscope or magnifying glass seems proof essential to show the qualification of an expert.

Chamberlayne on the Modern Law of Evidence,
Paragraph 2217.

State vs. DeGraff, 113 N. C., 688.
18 S. E. Rep., 567.

The holding if erroneous was error only.

Besides, both of these witnesses have unhesitatingly attributed to the Judge an unbalanced and impaired mind,

and yet this imputation was refuted conclusively by Dr. Little, the only physician examined, who had often attended him,—by Wimberly, Preston, and W. D. Nottingham at Macon, and by the array of corporation counsel and local political bosses at Savannah, Lawton, Adams, Osborne, Lawrence, Meldrim, Colding, and by Mackall, the President of the Trust Company there. All of these witnesses, it is true, decried his capacity as a Judge, but accorded him other mental powers of a high order. Even though his judicial powers may be defective enough to make him a “misfit,” as testified by the malignant Lawrence, they have been the reliance of his country in one of its most important districts in many a *cause celebre* for many a year. In most of these, the powerful clients of these gentlemen lost, and his country prevailed. Singularly enough, too, the work of the “judicial misfit” in such cases was after fierce review often affirmed and rarely reversed by the Judges of those great appellate courts who since they were appointed by the President, and confirmed by the Senate the Committee will doubtless assume are not judicial misfits. Long ago it was determined in the same constitutional way, that Judge Speer himself was not a judicial misfit.

CRITICISM BY MR. W. A. HARRIS.

The Chairman stated to Mr. Harris: “It is claimed that Judge Speer is arbitrary. Do you know of any facts of your own knowledge that would sustain this charge?” and called his attention to the case of *Matthew vs. Brotherhood of Locomotive Firemen and Enginemen*.

Mr. Harris replied (Stenographic Record, pp. 1251-2) : “Judge Speer declined to sustain the demurrer filed by counsel for the plaintiff on the ground that it had not the certificate of counsel, I believe it was, although it was a case at law. I think the ruling was proper. The reason for the ruling was not proper. It was not an equity case and did not require the certificate.”

It will be observed that Mr. Harris is not positive as to this ground of arbitrary conduct. He states merely "I believe it was."

Mr. John R. L. Smith, who represented the plaintiff, against whom the ruling was made, was sworn as a witness (Stenographic Record, p. 109). This witness cannot be said to be prejudiced in favor of the judge. He, however, does not corroborate Mr. Harris. This will appear from the following excerpt from his testimony (Stenographic Record, p. 110) :

"The Chairman: How about a demurrer?

"Mr. Smith. I do not recall about any demurrer in the case.

"The Chairman: Did he (Judge Speer) refuse to entertain the plaintiff's demurrer to defendant's answer because the demurrer was not verified as required by the equity rule?

"Mr. Smith: I do not recall that.

"The Chairman: You cannot remember that?

"Mr. Smith: No, sir."

Now reference to the record of this case and to the docket of the Clerk will show that there is on record or of file no demurrer to the defendant's answer described by Mr. Harris, and no record of an entry of the filing of any such demurrer, and no order of the court overruling such demurrer. It was the invariable practice of the court to sign all such orders.

Now a demurrer is generally heard *in limine*, and while this case was in law and not in equity and there was no requirement that the pleadings be verified, both the plaintiff's petition and the defendant's answer, as appears from the record, were verified under oath as in equity cases. While Mr. Harris seems to be mistaken in his recollection, if the Judge really gave the erroneous reason assigned for a correct ruling, the error may perhaps be traced to the superfluous and reiterated jurats.

Arbitrary conduct is assigned by Mr. Harris in another case. He testifies (Stenographic Record, p. 1253) : "In my

practice I have got only one case to which I can refer, in which I thought the Judge was arbitrary and unfair, and that was the case of Johnson *vs.* The Southern Railway Co., in which I represented the Southern Railroad (Mr. Harris continues to represent that client). In that case Johnson was a bailiff of the court and was represented by Akerman & Akerman, Mr. Johnson was injured in the same wreck in which Mr. Spencer, the President of the road was killed."

Mr. Harris further states that Johnson alleged that his neck was injured and that he had a severe and painful hernia. Mr. Morgan was a witness for the plaintiff, and Mr. Harris states that Judge Speer asked him if he had noticed Johnson before the injury and whether or not he was an erect man, and whether he had not noticed him after the injury, and did he not carry his head on one side. While Mr. Harris at first testified "of course the clerk testified that it was true," on being recalled (Stenographic Record, p. 1307) he also testified "that the facts to which Mr. Morgan testified were absolutely true * * * what I criticise is the option of the Judge in asking the questions under the circumstances."

It is respectfully submitted that on the trial it is proper for the Judge in his discretion to ask questions in order to elicit truth. He may even ask leading questions if he thinks proper.

Wigmore on Evidence, Volume 1, Section 784.

Mr. Harris further complains (Stenographic Record, pp. 1254-5) that "I asked Mr. Johnson in that case if he had not stated on various occasions before the injury, to people in Mount Airy from whence he came, that he had had this hernia prior to the time of the injury, and we also asked him if, after the injury, he did not play baseball on the Mount Airy team. We called his attention specifically to each of the persons in Mount Airy to whom we had put the question, asking him if he had not made statements to them

as to the hernia. He, in each instance, answered that he had not. Thereupon when the plaintiff closed we called all of these residents of Mount Airy to the stand, and they testified that Johnson made those statements. The court then adjourned until next morning, and the next morning one of the jurors was not in the box. Judge Speer stated, when he came upon the bench, that he had excused Mr. Geo. R. Turpin from the jury. He then stated that he would go on with eleven. The District Attorney, Mr. Akerman (Johnson's attorney), objected. I then asked that we postpone the case until the next day and see if Mr. Turpin was not well enough to come. The Judge said he was not disposed to show any favor to the defendant as we had not let Mr. Johnson know that these witnesses were here. I then said that we had called his attention to the fact, and that it would not have been any surprise to a man who was ready for trial. The Judge declined to do that and declared a mistrial, and the next morning I went to see Mr. Turpin and he was at his desk." While the stenographer's record does not so state, Mr. Harris testified that when he saw Turpin the latter said "I was sick."

Mr. Harris stated (Stenographic Record, p. 1259) that under the Georgia practice the case could not have proceeded with eleven jurors without the consent of the plaintiff, and that the plaintiff's attorney would not consent.

Now it does not appear from the evidence what facts induced the Judge to decline to recess the case, perhaps from day to day, until the sick juror might have returned. It was in the discretion of the court and under the circumstances the discretion was not abused. This is additionally shown by the fact that the defendant afterwards settled the claim of the plaintiff which it was then attempting to defeat. This, however, Mr. Harris testifies was done over his objection.

Johnson, it is true, was an officer of the court and had been injured on his return journey with another officer, where he had guarded a prisoner or prisoners to prisons to which they had been sentenced. The other officer, Henry

G. Tucker, was injured at the same time, and Mr. Harris' client also settled with him.

It does not appear that as to either incident did Mr. Harris make complaint against the Judge.

E. P. DAVIS, WARRENTON, GA.

Mr. Davis stated (Stenographic Record, p. 1208) that he was attorney for Max Stein, charged with concealing property from his trustee in bankruptcy; that he attended the court in Augusta while the matter was being presented to the Grand Jury, and that one day some of the witnesses casually remarked that he jury had failed to return a bill against Stein; that he went to the Clerk and was informed by that officer that he understood the Grand Jury had voted "No Bill," but their action had not been returned to the court; that the witnesses for the Government, Max Stein, and himself, all went home that afternoon; and when he got home he was informed that the Grand Jury had re-considered the case and returned a bill, and in the meantime Stein had gone to Gibson, a neighboring town. Mr. Davis further states that when the case was called in Augusta, Judge Speer "asked me if I knew that Max Stein was going away. I told him I did. He asked me if I told him to get away. I told him I did. As a matter of fact I did not tell him to get away, but I construed the matter as strongly as possible against myself. I told the Judge that I had told him to go away. Well that is about all there is of it. The balance of it was paying a fine. He fined me \$50.00." (Stenographic Record, pp. 1208-9-10-11.)

Mr. Davis further stated that he did not think that the bond of Max Stein was forfeited, and says that later the case against Stein was *nol prossed*.

The order of Judge Speer setting out in detail the reasons why the fine was imposed appears on page 1218 of the stenographic record.

This fine was imposed by the Judge to arrest a well

known and injurious practice. Stein was under an appearance bond to attend court. He was charged with the offense stated. The question of his indictment was pending before the Grand Jury. He was in fact indicted. When on the next day, the Government ready, its witnesses in attendance, the person indicted was called, he was absent, and his attorney stated in open court that he had advised him to "go away," or "get away." This advice was deemed improper. It would delay the trial, at least double its expense, probably necessitate the forfeiture of the bond, and subsequent proceedings, a second arrest, new *subpoenas* for all the Government's witnesses, with the contingency that one or more might die or depart the jurisdiction, and the ultimate failure of justice. Beside, attorneys should refrain from all interference with the action of a Grand Jury and await the formal return of its action to the court.

For the court to condone or ignore such conduct as Mr. Davis admits, would be to enable a person to obtain a continuance until the next term at any time, and most gravely to embarrass the proper dispatch of criminal trials.

The fine was imposed. The mischief to the enforcement of the law was avoided and no similar incident has since occurred.

Mr. Davis also testified (Stenographic Record, p. 1215) : "It is difficult to get the Judge to answer a letter, and I have had some experience in trying to get him to sign orders." In the case of Murray & Smith, a composition had been effected and he (Davis) requested the Clerk to present the consent papers to the Judge, who was then at Murphey, or Highlands, N. C., and that he (Davis) wrote Judge Speer two or three letters which were not answered, but when Judge Speer returned to Mount Airy, Mr. Davis went to that point and had no difficulty in getting the orders signed. It does not appear whether the Clerk at Augusta sent the papers to Judge Speer.

The statement by this witness that it is difficult to get the Judge to answer a letter is indefinite and is also wholly mistaken, as the files of his correspondence will show.

The complaint that the Judge would not sign an order approving a composition at Highlands, N. C., may be explained by paragraph 12, sub-section (c) of the Bankruptcy Act of 1898. This provides:

"A date and place, with reference to the convenience of the parties in interest, shall be fixed for the hearing upon such application for confirmation of a composition, and such objections as may be made to its confirmation."

At the time the courts were in vacation. Judge Speer was at Highlands, a point of inconvenient accessibility in the mountains of North Carolina. He was not even in the Fifth Circuit where the application was pending. It follows that a hearing there would have been wholly inconvenient to the parties at interest, and unless there was consent, probably in violation of law.

The witness adds (Stenographic Record, p. 1223): "I have no especial complaint about it."

RIGDILL-ELLIS COMPLAINT.

These gentlemen were two out of six members of the Tifton Bar whom the Referee had formally reported were in contempt of court. Four, it seems, had no complaint. It was in the bankruptcy case of the Farmer's Supply Company, pending before Honorable Clayton Jones, Referee in Bankruptcy. From his certificate duly filed in the District Court, it appears that a dividend of 23% had been improperly apportioned among creditors whose claims amounted to \$46,182.22. He further certified that at the time this dividend was made there were on file other claims aggregating \$11,743.43. The validity of these had been contested by the attorneys making the dividend sheet,—the Referee had held them valid, but by the action of these attorneys they were excluded altogether from participation in the fund thus distributed. These creditors were equally entitled with the creditors paid, but there remained in the hands of

the trustee only \$609.76, wholly inadequate to pay them their *pro rata* share of the dividend. The Referee certifies that instead of a dividend of 23% only 18% should have been declared, and further that the wrong was done by Geo. E. Simpson, Robley D. Smith and J. B. Murrow, all attorneys of record, while the Referee was busily engaged in the trial of a case in the Superior Court of Dougherty County. It was upon the representation and express assurance of these attorneys that their calculations were correct that the Referee declared the dividend of 23% and countersigned the vouchers. On verifying the figures he discovered the claims (\$11,743.43) allowed over the objections made, had been thrown aside and not permitted to share in the equal distribution. He further certifies that on three occasions, viz.: on the 6th day of February, 1911, on the 25th day of March, and on the 22nd day of June, of the same year, orders were passed by him directing the trustee to recall a sufficient portion of the dividend of 23% thus erroneously declared to enable the Referee to declare a dividend of 18% to all the creditors. This, however, was not done. These orders failing, on the 30th of December, 1911, the Referee himself granted a rule *nisi* directed to all the attorneys mentioned requiring them to show cause why there should not be refunded a sum sufficient to carry into effect the intention of the bankruptcy law so that the Referee might declare another dividend and give the excluded creditors equality. This rule of the Referee also directed the attorneys to show cause why the above facts should not be certified to the Judge of the District Court for his suitable action in the premises. It also appeared that Geo. E. Simpson, J. B. Murrow, Robley D. Smith, L. P. Skeen, R. C. Ellis, J. S. Rigdill, and Judge R. Eve, Trustee, all of Tifton, Ga., Hardeman, Jones, Callaway and Johnston, of Macon, Ga., and Geo. H. Boynton, of Atlanta, Ga., the attorneys who had received the excessive dividend, were duly served by the Marshal. On Friday, the 12th of January, 1912, answers were filed before the Referee by certain of these attorneys,—the Referee had a hearing, and on the 13th of

March, 1912, granted an order reciting the facts aforesaid, and requiring the respondents to show cause why such facts should not be certified to the Judge of the District Court for whatever direction and disposition might appear proper. Further the Referee certified that no such cause was shown and he certified to the court as follows:

"I therefore find that Geo. E. Simpson, J. B. Murrow, Robley D. Smith, L. P. Skeen, R. C. Ellis, and J. S. Rigdill, who have been served in person with copies of the above stated orders, and to whom were exhibited the original of these orders, are in contempt of court, and, therefore, recommend that they be punished for contempt and committed to prison until they shall have paid to the Trustee 5% of the proven claims which amounts were paid to them for their clients, and are evidenced by a copy of the dividend sheet showing the amounts to be refunded by each creditor hereto attached and made a part of this report."

This certificate has been furnished to the Committee.

On April 3, 1912, at Albany, in open court, the attention of Judge Speer was called to this certificate of the Referee by Mr. I. J. Hofmayer, an attorney of the Albany Bar, who represented the Referee in this matter. (Stenographic Record, p. 812.)

On this statement of Mr. Hofmayer in behalf of the Referee, Judge Speer, it is alleged, made the verbal statement from the bench in directing the issuances of the rules *nisi* which has apparently given offense to Messrs. Rigdill and Ellis. This alleged offense is set out in the colloquy following:

"The Chairman: Mr. Ellis, as I understand your complaint is not that you were arrested, but that the Judge announced from the bench and ordered your arrest and directed the Marshal to go to your home and arrest you?

"Mr. Ellis: That is it.

"The Chairman: And that after you had filed the very answer on which you were finally dismissed?

"Mr. Ellis: Yes, sir.

"The Chairman: Notwithstanding that fact he announced it from the bench and directed the Marshal to arrest you and the others. You do not complain that you were arrested, but you complain of the publicity that was given by the Judge?

"Mr. Ellis: That is it."

It is respectfully submitted to the honorable Committee that it is quite unsafe to rely for the ascertainment of judicial action upon the statements of resentful gentlemen against whom a rule *nisi* was regularly issued on report of the Referee responsible. The action of a court is known by its records, and the record discloses that on April 5, 1912, rules *nisi* were issued by the court and were directed to be served personally on the attorneys by the Marshal or his deputies. These were based on the judgment and certificate of the Referee. *Now to issue a rule nisi is only to open the door of the court.* No attachments were issued, no order of arrest signed. Indeed, Messrs. Rigdill and Ellis both testified that they were not arrested, that no attachment was issued against them,—they complain that the directions of the Judge given from the bench as to how the rules *nisi* should be drawn and served got into the newspapers, and Mr. Ellis testified:

"A trial through the newspapers is more damaging than one before the court often."

The Judge, however, is in no sense responsible for the activity or enterprise of the newspaper reporters, or for the facts certified by the Referee. The Judge intended no offense and gave none, save to the super-sensitive, or inimical.

The Referee's order to refund had been disobeyed. He had recommended the imprisonment of these gentlemen. The Bankruptcy Act, section 41 (a) provides "A person shall not in proceedings before a Referee (1) disobey or resist any lawful order" and sub-section (b) provides:

"The Referee shall certify the facts to the Judge, if any person shall do any of the things forbidden in this section. The Judge shall thereupon, in a

summary way hear the evidence as to the acts complained of, and if it is such as to warrant him in so doing, punish such person in the same manner and to the same extent as for a contempt committed before the court of Bankruptcy, or commit such person upon the same condition as if the doing of the forbidden act had occurred with reference to the process of, or in the presence of the court."

The order of the Referee requiring these gentlemen to refund 5% of the money paid to them could only be changed on a petition for review, and no such petition was filed. It was therefore final.

Had the Judge desired to be arbitrary or despotic, he could then have gone forward "in a summary way" on no other pleadings than those furnished by the judgment of the Referee and his certificate reciting the facts.

Such, however, was not the action of the Judge, and was not the established practice in this District.

In *Re. Jesse McCormick*, opinion filed May 11, 1907, the Referee made a similar certificate. There it was contended that the court should have acted on the evidence before the Referee and on his recommendation.

There Judge Speer held:

"The idea that this court has the authority, upon the return of the Referee, in the absence of a defense by the defendant, to order him into imprisonment, because he has failed to pay over a sum which the Referee directed him to pay, seems to be abhorrent to the fundamental principles of due process of law, and the liberty which we have inherited as part of our system * * *. The court will decline to hear the proceedings for contempt against this defendant, except upon pleadings filed in this court conformably to the general law of contempt, to be served upon him,—pleadings giving him the opportunity to appear and make his defense, and be confronted with the evidence and the witnesses against him."

This ruling was taken to the Circuit Court of Appeals in *McNeil, Trustee, vs. McCormick*, 182 Federal 808, and was there affirmed.

It follows, therefore, that the verbal direction to counsel who represented the Referee to carefully prepare rules *nisi* was in accordance with the established practice of the court, and was far more considerate towards these attorneys than might have been permitted by the section of the bankruptcy law above quoted.

In the colloquy between Mr. Chairman Webb, and the witness Ellis (Stenographic Record, pp. 866-7) reference is made to the alleged remarks of the Judge "After the answer was filed on which the witness was finally dismissed." But, when the alleged remarks were made, the attorneys had filed no answer at all before the District Court. Indeed, by that court no rules had been issued. The remarks which apparently afforded the witnesses grievance were made in directing the issuance of the rules, and notwithstanding the drastic recommendation of the Referee and the apparent disrespect to his findings by the attorneys, the action of the court was moderate. It is plain, therefore, that since, up to that time, the District Judge had taken no action, there was nothing pending which the witness could have answered. The only answer he and the others had made was solely before the Referee. By that court it had been pronounced insufficient, and the grounds of defense had in no way been brought to the attention of the District Judge. This was done for the first time at the hearing of the rules *nisi* issued by the District Court when, notwithstanding the judgment of the Referee, as soon as two of the answers of the respondents were read, the Judge stopped the hearing and dismissed the rule.

The witness, Ellis, seems equally inaccurate in his statement that the Judge attempted to place the whole burden of refunding on one creditor, W. W. Timmons. This error may be easily seen.

Ellis in his testimony complains that after Judge Speer had dismissed the rules against the attorneys and stated that the creditors who received the excessive payment should refund the amount necessary to pay the correct dividend, remarked: "Every man should receive justice in his

court, and every man should be treated alike." Then his attention was called to the fact that W. W. Timmons, one of the creditors in court, had been assessed by the Referee with \$800.00, and that that sum would be sufficient to pay the creditors another dividend, that Judge Speer then remarked "Well, if Mr. Timmons is in court and pays that back it will settle it." He complains further that after Judge Speer had stated that he was going to do justice to all that he was going to let one man shoulder the burden of all.

Now, by reference to the order of the court (Stenographic Record, p. 863), it will be seen it is recited therein, that practically all of the creditors had paid back 5% of the amount of their proven claims, except W. W. Timmons. This creditor was ordered within ten days to pay the Trustee \$793.60, which had been paid to him by the error of the three attorneys making the dividend sheet, and for the purpose of strict impartiality, it was ordered that the case be referred to another Referee, to-wit, Jas. F. McCrackin, Esq., with direction to investigate the entire case, to endeavor to collect all amounts due by every one, and to determine what further dividend, if any, can be declared. So far from saddling the entire burden on Timmons the order expressly provides that the amount he was directed to pay in, should not be used, unless the Referee determined that it was necessary and proper. From the order signed by the Judge and not from the recollection of prejudiced and partisan attorneys should the action of the court be judged.

There is, then, literally no excuse for resentment by any one.

It otherwise appears from the evidence of Mr. Rigdill that he is offended with Judge Speer because on another occasion (Stenographic Record, pp. 820-1), the court sustained a demurrer on the argument of an attorney associated with Rigdill, without hearing Rigdill himself. Rigdill testified:

"I got up when the case was called and announced to the court that I represented the county of Tift,

giving him my name. He paid no attention to me whatever, seemed to ignore the fact,—did not seem to know me in the transaction at all. Hofmayer went ahead and presented the demurrer and of course it was sustained, mine was, too, as they were sued as joint *tort feasors*, and that was the proposition, it was sustained."

Rigdill does not testify that he attempted to argue, and in the absence of proof to the contrary, as he permitted Hofmayer to go ahead, it is but fair to presume that the Judge believed him to be content with the argument of his associate. His client prevailed, and while he may have suffered because of an undelivered address, the court was not advised of the fact and surely meant no disrespect.

The witness, Ellis, betrays a spirit equally malevolent and not less unmerited. He testified (Stenographic Record, p. 857) : "I wanted to be arrested, if I was to be arrested, and carried there, that I might have more grounds against the Judge." This statement seems important in view of the general complexion of the evidence.

Both of these witnesses testified that the community in which they lived were unwilling to trust the Judge with their litigation, and as a consequence there was much public unrest. In reply to this it may suffice to state that Tifton is situated in that section of Georgia where the manufacture and shipment of lumber had perhaps its largest development. The town itself was named for its principal citizen, H. H. Tift, and he and the Saw Mill Men's Association, comprising many foremost men of that section of the State, in the case of *Tift, et al. vs. The Southern Railway, et al.*, not only sought this court, but obtained here judicially the greatest relief ever accorded the shippers of the South under the provisions of the Interstate Commerce Act.

- 123 Fed., 789.
- 138 Fed., 753.
- 148 Fed., 1021.
- 159 Fed., 555.
- 206 U. S., 428.

These cases were affirmed by the Supreme Court of the United States. That resulted not only in enjoining an arbitrary increase of rates upon the lumber industry, but in the repayment to the shippers of more than two millions of dollars, a large portion of which was refunded through the action of the court in the immediate section where Rigdill and Ellis reside.

Of this case the Chairman of the Interstate Commerce Commission, the Honorable Judson C. Clements, wrote to the Judge deciding it, the letter following, which, as it is in a sense official is respectfully tendered:

Interstate Commerce Commission, CDF
Washington.

July 6, 1905.

Hon. Emory Speer,
Macon, Georgia.

My dear Judge:

I beg to acknowledge receipt of a copy of the Macon Telegraph of recent date, containing your opinion in the Lumber Case, disposed of last week. I am greatly obliged to you for your kindness and thoughtfulness in this respect. While I had seen a brief statement of the outcome of this case, I had not seen anything like a full copy or synopsis of the opinion until I received the paper which you sent me. It is needless for me to say that I feel sure that the facts of the case fully justify your conclusions and that the ends of justice are subserved by the same. I want to say more than this: I am very much gratified at the principles which are so clearly laid down and strongly set forth and fortified in this able opinion. If sustained, as I feel sure it must be, it is bound

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to be a leading authority in respect, at least, to some of the questions so ably treated. It will greatly clear the atmosphere and facilitate the work of the Commission in future cases. Having no other interest, of course, in these questions except to see the ends of justice promoted and a law made reasonably effective to that end, I have the same feeling that you express in respect to the great value of the railroads in the development of the country and their right to full and adequate protection equal to that accorded to every other interest. It would be difficult to improve upon the following statement contained in the opinion:

"The patriotic and proper solution of every controversy involving the vast questions of transportation, is simply the trial of each case on its particular facts and with an eye single to the merits of the one party or the other."

Again thanking you and with kindest regards, I am,

Very truly yours,

Judson Clements

CRITICISMS OF W. C. SNODGRASS.

Another instance of alleged arbitrary conduct on the part of Judge Speer is narrated by Mr. W. C. Snodgrass, an attorney of Thomasville, Ga. (Committee Record, p. 705). This has reference to the case of Hopkins, Trustee, *vs.* First National Bank of Thomasville. Mr. MacIntyre, the law

partner of the witness, Snodgrass, the firm being Snodgrass & MacIntyre, it appears was the largest stockholder in the Montgomery Drug Company, of Thomasville, and he was perhaps the only solvent stockholder. He was also a stockholder and director of the First National Bank of Thomasville. The Drug Company becoming embarrassed, sold its entire stock of drugs and business for ten thousand dollars. This was deposited with the First National Bank. It was understood to be a special deposit for distribution among creditors. But the bank held notes of the Montgomery Drug Company, endorsed by MacIntyre. Through what influence it does not precisely appear, the Bank undertook to appropriate the deposit of ten thousand dollars to pay the notes thus endorsed, and held by it. The Montgomery Drug Company having been adjudicated a bankrupt about the time of the sale, the Trustee, Mr. Hopkins, filed a petition setting up that the ten thousand dollars had been deposited with the bank as a special deposit for the purpose of paying the creditors of the drug company and not the bank alone.

The bank, notwithstanding the purpose of equal distribution of the bankruptcy law, having thus obtained possession of this sole asset, sought to absorb the last dollar. This, the Committee will observe, would have relieved director and partner, MacIntyre from his endorsement on the note as stockholder in the bankrupt drug concern. The trustee, through his attorneys, Patterson & Copeland, of Valdosta, and Hardeman, Jones, Park & Johnston, of Macon, widely known lawyers, brought a summary proceeding against the bank to recover the proceeds of the bankrupt stock. The action of the bank had apparently made the deposit an aggravated and undeniable preference in its own favor. The matter was first presented to Judge Sheppard, of the Northern District of Florida, then presiding at Valdosta, who directed that the evidence be taken. This was done, and it finally came on for hearing before Judge Speer for decision on the pleadings and evidence. After full argument, Judge Speer held that the bank could not under the circumstances take the entire sum to pay the notes endorsed

by its active director, MacIntyre, and that the trustee should recover it for *pro rata* distribution among the creditors. The case was then carried on petition to superintend and revise to the Circuit Court of Appeals. That court reversed the decision of Judge Speer, but not upon the merits of the controversy. It held that there was a real adverse claim on the part of the bank, and that the proper remedy of the trustee was a plenary suit and not a summary proceeding. 199 Fed., p. 873. The hearing was had in open court at Macon. The facts were not intricate. It was mainly a question of law and procedure, namely, whether a summary proceeding before the court or a plenary suit in equity was the proper remedy. There did not seem necessity for delay or advisement. Judge Speer promptly decided that the petition was proper. True, he was reversed on appeal, and presumably therefore erred, but if there was no error in the trial court the appellate courts would be a superfluous feature of our system. Error is not corruption or arbitrary misconduct. The Committee is bound to presume that the error was an honest mistake. There had been indeed material differences among the courts on this precise question.

The chairman in the examination of Mr. Meldrim, in Savannah, elicited that there had been forty appeals from Judge Speer to the Circuit Court of Appeals. That court has been in existence twenty-three years. The appeals have averaged then less than two per annum. In these Judge Speer, the chairman stated, had been reversed in nineteen and affirmed in twenty-one. Even the malevolent Meldrim testified that was a very good record. It is less than one reversal a year.

Had the chairman time to search the record further and to ascertain how many times Judge Speer had been affirmed in cases of the utmost concern by the Supreme Court of the United States, the record would have seemed far more creditable. Had it been convenient for him to ascertain when and how often he had been reversed by the Circuit Court of Appeals when the Supreme Court afterwards re-

versed that great tribunal and affirmed the ruling of Judge Speer, that also might have thrown some valuable light on his judicial record.

A notable instance of this sort may serve to account, in part, for the prejudiced testimony of Mr. Snodgrass. That is the case of Mrs. Graves, and her daughters, of Courtland, N. Y. against W. W. Ashburn, a wealthy turpentine and saw-mill man, H. T. Crawford, a banker and saw-mill man, the administrator of A. T. MacIntyre, Jr., and A. T. MacIntyre, Sr., a close relative of the law partner of Mr. Snodgrass. This involved the title to two thousand acres of land in Colquitt County, Georgia. Mr. Snodgrass was of counsel for one of the defendants. Judge Speer not only held that these ladies had the legal title to four lots of land of 490 acres each, but that they were entitled to damages because the defendants had cut and "boxed for turpentine" the pine trees which constituted the chief value; also to a perpetual injunction. As to one and one-half lots, he held that the court did not have equitable cognizance as there was a complete remedy at law. The Circuit Court of Appeals reversed this decision, and ordered the bill dismissed, 149 Fed., p. 968. The case was then taken to the Supreme Court of the United States. That court in turn reversed the decision of the Circuit Court of Appeals, 215 U. S., p. 233, thereby affirming Judge Speer as to two and one-half lots, the title to which he declared to be in the New York complainants, and remanding the case for decision as to a lot and a half not passed on by Judge Speer. A final decree was then entered in favor of the complainants. This decision was carried by the defendants to the Circuit Court of Appeals, and Judge Speer was affirmed by that court on December 23, 1913. This last case is not yet reported.

The decision by the Supreme Court in *Graves vs. MacIntyre, et al.*, is of the utmost importance to the owners of the vast areas of pine lands in the Southern District of Georgia. There the doctrine was established that an injunction would lie to prevent the cutting of pine timber on such lands, and that the remedy at law for damages was

not adequate even where the trespasser is solvent. The Supreme Court observes:

"The industry concerned is so important to the State of Georgia, and the remedy in damages is of such doubtful adequacy that equity properly may intervene, although in different circumstances an injunction against cutting of ordinary pine timber might be denied."

In view of such a judicial accomplishment for their benefit, it would be singular, if true, as stated by Mr. Snodgrass, that the people in his section did not have confidence in Judge Speer. Mr. Snodgrass doubtless lacks confidence in the Judge because it became the duty of the latter to hold against Mr. Snodgrass' powerful clients in favor of the otherwise helpless ladies in a distant state, outfaced those clients of their spoils and restored them to their true owners.

A similar case which has probably intensified the belief of Mr. Snodgrass in the arbitrary and despotic character of Judge Speer, was that of Mrs. Catherine Kilgore, a lady living in Utah, against a number of defendants in Colquitt County, including the administrator of the same A. T. MacIntyre, Jr., and the executor of A. T. MacIntyre, Sr. This was brought for the recovery of a large number of lots of pine land, of which this poor woman had been robbed in the most outrageous and fraudulent manner. The opinion of Judge Speer on a preliminary matter appears in 119 Fed., p. 1006. His decision was affirmed by the Circuit Court of Appeals in 120 Fed., p. 1020. After this decision, settlements were made and consent decrees taken settling the title to thousands of acres of valuable pine lands, and giving to the plaintiff a large sum to which she was lawfully entitled. This case affected a number of influential people in that section, and antagonized a number of attorneys who were directly interested in the result of the litigation and adversely to the ruling and decision of the court in favor of Mrs. Kilgore.

In the neighborhood of Mr. Snodgrass was the great equity cause filed against J. L. Phillips & Company, the

Cherokee Saw-Mill Company, and the Tallahassee Saw-Mill Company. It involved probably a million dollars. The action was brought by a minority stockholder for the purpose of preserving the great values involved. Mr. Snodgrass was prominently mentioned to the Judge as a suitable receiver. The suggestion was not regarded by the court with favor. Hon. J. M. Wilkinson, Vice-President of the Georgia & Florida Railroad, was appointed, and while some of the properties have not prospered, the Cherokee Saw-Mill Company, whose plant is located a few miles from Thomasville, the home town of Mr. Snodgrass, is now understood to be entirely solvent and one of the large enterprises of that section. That solvency was doubtless saved by the action of the court.

The unfavorable opinion which Mr. Snodgrass entertains of Judge Speer must be of recent origin. The Judge is the proud possessor of a memorial to the President, duly authenticated by the Department of Justice, commending him in unreserved terms for promotion to the Circuit Court of Appeals of the Fifth Circuit. It is signed by many distinguished gentlemen of the Thomasville Bar, and notable in the admiring list is the name of "Snodgrass."

CORRUPT CONDUCT IN RAISING THE AMOUNT OF
FEES ALLOWED TO OTHERS, IN ORDER THAT
HIS SON-IN-LAW MIGHT PROFIT THEREBY.

This charge is based upon a statement furnished the Examiner by Alexander Akerman, relative to fees in the Mize & Oliver and A. D. Oliver cases, a very extensive and complicated litigation.

Under the practice in this District, applications for fees on the part of attorneys and receivers in bankruptcy cases are referred to Special Masters, who hear and investigate the record and report the actual value of the estate, the character of the services rendered, and the approximate amount of compensation to be allowed. Upon the filing of

this report the clerk is required to give five days' notice to parties at interest and exceptions must be filed within that period.

This practice is fully described by Judge Speer. In *Re. Huddleston*, 167 Fed., 431.

The compensation allowed the Special Master is invariably small; the practice insures a thorough judicial investigation of each application, and has saved many thousands of dollars to the estates of bankrupts.

This course had been adopted in the case of A. D. Oliver, Mize & Oliver, and other branches of the "Oliver Case."

There were before the Judge the Masters' reports on several applications for fees, including the following: Hawes & Pottle and Talley & Heyward, attorneys for F. S. Jones, Trustee of A. D. Oliver; also application and report of Master thereon of W. H. Krause, Donalson & Donalson, Hawes & Pottle and Talley & Heyward, attorneys for petitioning creditors in the case of Mize & Oliver; also report of Master on application of George F. White, receiver of Mize & Oliver estate.

To all of these reports no exception had been filed and the time for exceptions had expired.

The sole exception was to the report on the application of Akerman & Akerman and W. C. Snodgrass, attorneys for Geo. F. White, receiver, allowing these attorneys \$200 as fees. To this Akerman & Akerman and W. C. Snodgrass had filed exceptions on the following grounds:

"Because the fee recommended by the Master is too small and is inadequate compensation; because the testimony was that a reasonable fee would be \$500; because the fee recommended by the Master is disproportionate to fees recommended to be allowed to other counsel in said case."

The reports of the Master contained an itemized statement of the value and condition of the estate, and showed that there was sufficient money in hand to pay the fees allowed by the Master.

These reports and the orders thereon were submitted to the Committee.

Notwithstanding the fact that no exception was or could have been filed, Mr. Alexander Akerman seeks to show that Judge Speer raised the fees of Akerman & Akerman and W. C. Snodgrass from \$200 to \$375, not because of the merit of their contention that they were entitled to \$500, but to keep Akerman from objecting to the payment of the fee allowed Hawes & Pottle and Talley & Heyward, Mr. Heyward being Judge Speer's son-in-law.

The relating evidence of Mr. Akerman is as follows (Stenographic Record, pp. 1065-6-9) :

"About July 21st, 1911, I was at Mount Airy. Mr. Heyward, of the firm of Talley & Heyward, came to Mount Airy with the Master's reports fixing the allowance for several of the counsel or parties to the case, counsel and officers. Judge Speer and Mr. Heyward walked over to me on the lawn at the hotel, and the Judge remarked that Hasell was badly in need of some ready money, or money, I don't remember which, and asked if there was any reason why the fee allowed Messrs. Hawes & Pottle and Talley & Heyward, and I don't know who else, should not be allowed at that time. And I stated to the Judge the only reason I had to urge against the fee allowed other counsel, was that my information was there was not enough money to go around, and that the fee that had been allowed my interest was grossly inadequate, and that I had filed or intended to file exceptions. Mr. Heyward immediately assured us that there was enough money to go all around, and the Judge said if my fee was raised in proportion would that remove my objection. I told him it would, because I was still of the opinion we would have to pro rate. The master had recommended an allowance of \$200 for the services of Akerman & Akerman and W. C. Snodgrass. I told him that was my objection. He took the papers and turned them over to his secretary. He allowed Akerman & Akerman and W. C. Snodgrass \$375. My recollection is he stated to me in that conversation that he would raise my fee to \$500, which I had testified was the correct or proper amount, or to \$450,

but when the papers came back down here it was \$375."

The Committee, it is respectfully submitted, should look very carefully to this testimony of Mr. Akerman and consider it in connection with his written statements to the Attorney-General. He now states "his recollection and impression."

The inquiry of Judge Speer to him on the lawn at Mount Airy, as the witness relates it, referred not to the amount or propriety of the fees of Talley & Heyward, and the other attorneys who were with them in the case, but to the time when the allowance was to be made, whether there was objection to paying it now, and whether there was a fund in hand sufficient to pay all the fees allowed.

The following questions were asked the witness Akerman (Stenographic Record, p. 1069) :

"The Chairman: He told you Hasell wanted his money now, and if you did not object to his allowance that he would raise you, according to your contention?

"Mr. Akerman: I have related his language as near as I can after that lapse of time, and that was the impression I got, sir.

"Mr. Volstead: Do I understand that he would raise yours if you would not object to Heyward's?

"Mr. Akerman: No, sir, I had not excepted to Heyward's, I was objecting to his making any allowance at that time until all the money came in, if there was not enough to go around we would have to pro rate equally, that was the point I was making."

Not only does Akerman testify that he had not excepted to Talley & Heyward's fee, but it is true that he then could not except. The time to file exceptions under the rule had expired. The rule of force is as follows:

"It is by the court ordered, that in all cases, before the report of a Special Master, allowing fees to attorneys or other officers in bankruptcy, shall be presented to the court, said report shall have been filed in the Clerk's Office, for at least five days, and that written notice of the day and place of presentation of the report to the Judge, and the hearing thereon, shall have been given by the Clerk, to the trustee, and to the bankrupt, or their attorney of record, for at least three days.

"This 30th day of April, 1907.

"(Signed) EMORY SPEER, Judge."

Now in his statement to the Attorney-General, or his Examiner, Akerman said that the time for excepting to the reports had not expired.

Again in his statement to the Attorney-General, or his Examiner, or both, Akerman charges Judge Speer said "If your fee is raised to \$500 will you still object to the money being paid out?"

Here, under oath, he says, "My recollection is he stated to me in that conversation that he would raise my fee to \$500, which I had testified was the correct or proper amount, or to \$450, but when the papers came back down here it was \$375."

In his statement to the Chief or other officer of the Department of Justice, Mr. Akerman made an imputation on Judge Speer. Here it seems, taking his statement as true, all that the Judge did was to suggest that Heyward needed the money which had been adjudged his firm and his associate counsel, and asked Akerman if there was any reason why it should not be allowed at that time. This alone, if true, would seem unimportant. Conceding *arguendo* that Akerman's testimony is true, here is no corruption. The report of the Master was *prima facie* correct. As early as *Harding vs. Handy*, 11 Wheaton, 126, Chief Justice Marshall declared:

"The report of the Master is received as true, when no exception is taken."

This ruling is followed in many cases.

This would seem conclusive when under an established rule of practice the time for filing exceptions had expired, and none in fact had ever been filed or were now offered. But, if the Committee will consider the accusing statement of Akerman to the Attorney-General, along with his testimony here, and with the record, his inconsistencies will likely make them discard both altogether.

Again, under the familiar rule the Judge should have the benefit of the presumption that he acted regularly and lawfully. *Omnia praesumunter rite et solenniter esse acta.*

Then, there is Judge Speer's opinion in the record (Stenographic Record, p. 2174). This the Committee has heard read. This was on the only exception pending and that was Akerman's to increase his own fee. It was all in vacation at Mount Airy. There were present Mr. Heyward, Mr. Cooper Morcock, the official stenographer, and Judge Speer. They were all sitting in a swing on the lawn in front of the Monterey Hotel. When Mr. Akerman finished his statement, or argument, in support of his exception, Judge Speer immediately turned to the stenographer and dictated his opinion, reviewing the remarkable character of the case, modifying the report of the Master, and fixing the fees. This was the testimony of Judge Speer,—this would have been the testimony of Mr. Heyward and Mr. Morcock, both of whom were in attendance at the sittings at Macon, Mr. Morcock, now Deputy Clerk, was at Savannah also. Mr. Morcock and Mr. Heyward are widely known to be gentlemen of character and honor. They will both testify that after Judge Speer's dictation was completed, Mr. Morcock at once repaired to his temporary office across the street above the store of A. L. Kimsey, and Heyward and Akerman followed him there and remained a part of the time, at least, while he was transcribing the opinion.

It may be added that on account of the interest of the case, the opinion of the Judge was contemporaneously published in one or more newspapers of the state. He fixed the fees and disallowed Talley & Heyward and their associates

an expense account allowed by the Master, of \$125, and in terms expressly allowed Akerman a fee of \$375. The attention of the Committee is especially invited to this opinion (Stenographic Record, p. 2174.) This shows by the record the utter inaccuracy of Akerman's recollection and would seem to utterly refute the charge of raising the amount of fees allowed to others in order that his son-in-law might profit thereby.

THE SCARBORO CASE.

Frank Scarboro, Cashier of the First National Bank of Tifton, was indicted for violation of section 5209 R. S., making false entries, putting forth unauthorized certificates of deposit and making false reports to the Comptroller of Currency.

The case was tried before Judge Speer at Albany in April, 1912. Mr. Alexander Akerman, United States Attorney, alone appeared for the United States, his two assistants, Mr. Chas. Akerman, his brother, and Mr. Codington, being in attendance on a court held in Augusta by Judge Sheppard.

The defendant was represented by Reuben R. Arnold, of Atlanta, L. P. Skeen, of Tifton, F. G. Boatright, of Cordele, Talley & Heyward, of Macon, and Judge D. F. Crossland, of Albany.

On the first day of the hearing a considerable time was devoted to the argument of demurrers.

Mr. Alexander Akerman, who makes the complaint about the case, says (Stenographic Record, p. 1082) :

"There were numerous demurrers filed and various attacks upon my indictment. I had discovered, myself, that perhaps six counts in the indictment were defective, and had gone before the Grand Jury, which cured all of those defective counts not barred by the statute of limitations. They attacked all the remaining bad counts, and I had to concede they were bad. We argued the demurrers. I was alone.

Judge Speer sustained some and overruled some. I have no criticism of his ruling there at all. One witness had partially testified as an expert as to his examination of the books of the bank."

The court then adjourned until next morning, and at 6:30 o'clock Judge Speer sent for Mr. Akerman and said (Stenographic Record, pp. 1083-4-5) :

"Mr. Akerman, I am going to say something to you which I very much fear you won't appreciate * * * in this case which is on trial the evidence has progressed far enough to convince me the defendant is clearly guilty, and you know how anxious I am that there shall be no miscarriage of justice in my court, and I wanted to state to you that I think you are overmatched in counsel."

"I said, 'Judge, nobody realizes that more than I do, and I think I am entirely overmatched.' "

As a result of the conversation, Mr. Akerman secured authority, and Messrs. S. S. Bennett and John D. Pope, composing the firm of Pope & Bennett, were appointed Special Assistant District Attorneys. Mr. Akerman states the case progressed several days, "piling up evidence," and further says that "without a moment's warning, and without the slightest intimation, Judge Speer turned loose on the charge * * * it was just a little short of directing a verdict of not guilty."

He says (Stenographic Record, p. 1086) that in his statement to the Examiner, Mr. Lewis, he had characterized the Judge as follows:

"Judge Speer delivered from a carefully prepared manuscript, the most terrific charge against the Government, and which was very little short of peremptory instructions for the defendant,"

and further

"There is a copy of the charge on file in the Department. I sent it with a special report in that

case, to make it apparent why I had not won the case."

Mr. Akerman further testifies (Stenographic Record, p. 1087), that during the supper hour, Mr. White, United States Marshal, came to him and asked if he would be satisfied with a mistrial in that case, and "I told him, after that charge, I would be satisfied with anything," and at eight o'clock a mistrial was declared, that "Mr. White afterwards told me that when he told Judge Speer that the jury stood either eight to four or ten to two for conviction, the Judge told him not to let them go back to deliberate, but to keep them walking until he could get back there and declare a mistrial."

Mr. Akerman says that in his opinion Scarboro was guilty (Stenographic Record, p. 1088), but adds:

"I must say, however, on another trial of the same case, before another judge, I think the jury stood exactly the same, only Judge Grubb kept them out ninety-six hours, and there was another mistrial."

When a copy of the charge was handed Mr. Akerman on the witness stand (Stenographic Record, p. 1124), he stated that he had never read it. He was asked to read the charge handed to him and point out the portion he criticised, but was unable to do so.

Referring to the second charge before Judge Grubb, Mr. Akerman says his charge was "a little more favorable to the Government," and that "the jury hung up ninety-six hours and had another mistrial." And then he *nol prossed* the case (Stenographic Record, p. 1133) and has "repeatedly" called the attention of the Department to the fact that "I thought the penalty was entirely too severe, and has a tendency to prevent a verdict of guilty."

Mr. Akerman was asked about a quotation from the charge (Stenographic Record, pp. 1134-5) and asked if that was the language he had reference to as being terrific? He replied that Judge Speer referred to the defendant's wife

and child. Mr. Akerman was then handed a newspaper account of the remarks made by Judge Speer on declaring a mistrial and asked if the language he complained of did not appear in those remarks and not in the Judge's charge.

Mr. Akerman (Stenographic Record, p. 1138) says, "I am inclined to think that was before a mistrial was declared, or it might have been right afterwards, but I stated to him that I have no authority to say that the Department would not put the case on trial again, but that the general policy of the Department was not to re-try a case where there had been a mistrial."

Mr. Geo. F. White, U. S. Marshal (Sten. Rec., p. 1387) testifies that about half past four o'clock in the afternoon, Judge Speer came to the court house and stated that he wanted to take a ride, and asked him to inquire if the jury would agree soon, and if not he would take a ride. Mr. White made inquiry of the jury and was told that "they had not agreed and there was no hope of an agreement. Judge Speer said he would take a ride, and told him I could take the jury for a walk before supper, but to tell the Deputy Marshall and Bailiff in charge of them not to allow the jury to talk to anybody and to keep them together. I have been letting them go by their homes to get clean clothes and other things."

In regard to the incident at the supper-table, Mr. White testifies (Stenographic Record, p. 1388): "As I went in the dining-room, Mr. Akerman called me to his table. He asked me how things were going, and I said I think we will get a mistrial, will that be satisfactory?" He said, "Do you think that is the best we are going to get?" I said, "I guess so."

Mr. White further says that he was not directed by Judge Speer to keep the jury walking until he could get back so he could direct a mistrial.

The jury was in charge of Frank Riley, a Deputy Marshal, and Harry Burns, a Bailiff. They took a walk before supper and after supper about half past eight o'clock, went back to the court house for further deliberation.

Frank L. Riley, then and now a Deputy United States Marshal, who had charge of the jury, was in the court room, at Macon, while the investigation before the Committee was going on, but was not called as a witness, although attention was called to his presence in the room.

An affidavit of Harry Burns, a bailiff, who, with Frank L. Riley, attended the Scarboro jury, was read into the record before the Committee. (Stenographic Record, p. 1249), Chairman Webb stating "We have the statement of Harry Burns, whom the committee is informed is somewhere in Florida, and therefore we will use the affidavit."

Mr. Burns was present at the hearing before the Committee during the following week at Savannah, being brought there as a witness as will appear from the records of the Sergeant-at-Arms, but he was not sworn.

In this affidavit Mr. Burns says:

"When we got through with supper, he (Geo. F. White, United States Marshal) came to me and instructed me to keep the jury walking and not to take them back to their room for further deliberation until specially instructed to do so. This instruction was followed and we kept the jury walking for about an hour before we were called in."

As already stated, Mr. Riley, and not Mr. Burns, was in charge of the jury, and Mr. White has testified that he gave no instructions to any one after supper, that the walk taken by the jury was taken before supper.

Judge Speer states in his testimony that before the mistrial was declared Mr. Akerman, the United States Attorney, Mr. Smith, the Treasury Agent, and Mr. Talley, one of the attorneys for the defendant, were called into his office, and all agreed that it was unnecessary to keep the jury together longer because a mistrial was inevitable.

When the jury was called in Judge Speer in his remarks from the bench stated that he had been assured by the District Attorney that the ends of justice in that case would be met by a mistrial. Mr. Akerman was present and made no protest or objection.

In this matter Mr. Akerman seems conspicuously in error,

except in his statement about the demurrer, his concession that he was "entirely overmatched" by the numerous and distinguished counsel for the defense, and his further statement that on another trial of the same case before Judge Grubb, when the jury was kept out for ninety-six hours, there was another mistrial.

His indictments were shockingly bad. Many counts were stricken on demurrer, but he testifies "I have no criticism of his ruling there at all."

Notwithstanding this, and what seemed his sad lack of preparation the Treasury Agent seemed, early in the trial, to make out a *prima facie* case. Nevertheless, for the reasons above stated, it seemed there would be an inevitable miscarriage of justice, this it was deemed the duty of the Judge to prevent, if he could. The suggestion that the Government should have additional counsel was accordingly made and was accepted in apparent good part and acted upon.

After several days of "piling up evidence," to quote Mr. Akerman's language, he continues, "and without a moment's warning, and without the slightest intimation, Judge Speer turned loose on the charge * * * it was just a little short of directing a verdict of not guilty."

Surely Mr. Akerman does not mean to intimate that there were not several arguments both for the Government and for the defense, after the evidence was concluded. Judge Speer has never been apprised of any rule of practice which requires him to give even a "moment's warning" or even the "slightest intimation" to counsel of the nature of the charge he proposes to make to the jury.

The Committee will observe, however, that the whole incident as related by Mr. Akerman, may serve to confound those disgruntled corporation and other attorneys who testified that Judge Speer invariably jumped to a conclusion and drove the jury to find an according verdict. Certain it is that he did not "turn loose" until after all the evidence was in and the concluding argument and the other arguments were made. That his charge was carefully pre-

pared and in manuscript, it is submitted, is not reprehensible. The Committee has a copy of that charge and Judge Speer most respectfully invites their careful scrutiny to the principles it announces for the guidance and assistance of the jury, its language and temper.

The grave trouble with Mr. Akerman's case was not the charge of the Judge, but the youth of the accused and the minimum punishment of five years in the penitentiary. This no doubt had great weight with the jury before Judge Speer and the second jury before Judge Grubb. In each case there was a mistrial.

Again the statement which Akerman attributes to the Marshal, Geo. F. White, viz.: that Judge Speer told him to keep the jury walking so they could not deliberate until he could get back to the court house and declare a mistrial, is not only hearsay, but it is flatly contradicted by White himself. Judge Speer also testified that the only directions that he gave about the locomotion of the jury was to let them have a walk before supper, with instructions that they be permitted to speak to no one. Burns, a bailiff, made an *ex parte* statement which was read into the record (Stenographic Record, p. 1249). He was not present at the hearing in Macon, but he was subpœnaed from a distant point in Florida and attended several days in Savannah. Judge Speer states, on information and belief, that Burns informed the Examiner that he desired to change his affidavit and substantially to make his statement conform to Mr. White's, viz.: that no unusual or improper suggestion was made to him. He, however, was not in charge of the jury. This duty fell upon Deputy Marshal Riley. That officer was in attendance on the court at Macon. His presence in the court room was called to the attention of the Committee, but neither Burns in Savannah, or Riley in Macon, were sworn as witnesses. Judge Speer states on information and belief that Riley will also testify that he received no unusual or improper instructions from the Marshal. The fact is that the only walk the jury took that day, save to and from the hotel, where they were boarded,

was before supper. After that meal they returned to the jury room and were there for some time presumably deliberating. It was during this time that Judge Speer, as appears from his testimony, held a conference with the attorneys for the prosecution and defense and the Treasury Agent as to the propriety of declaring a mistrial. Again, the Marshal was sent to the jury in accordance with the usual practice to ask the foreman if they had agreed on a verdict, or were likely to agree. On his return, the Judge was informed that they would never agree. They were brought into the court room and Judge Speer, in directing the mistrial, made certain remarks which were stenographically reported and were printed in the *Albany Herald* the next day. These are in the record and have been read to the Committee.

In these remarks, Judge Speer stated, among other things:

"When cases have been so thoroughly tried, and there has been such careful sifting of the evidence, and when jurors of the highest class, and pardon me, gentlemen, I think you are of that class, conscientiously hesitate, it is usually an end of the case. That is the opinion of the District Attorney, and the officer of the Treasury in charge tells me that he thinks a mistrial in this case, under all circumstances, would probably be tantamount to the same thing, in its effect, as a conviction. Now, that being true, it may be that a mistrial will accomplish no injury, but on the whole will produce beneficial results,—the law will be vindicated and the life of an amiable family will be saved."

District Attorney Akerman and Treasury Agent Smith were both in the court room and near the Judge when these remarks were made,—both had been consulted as to the propriety of the mistrial, and neither made the slightest objection. It is true that in his remarks to the jury directing a mistrial, Judge Speer made some reference to the wife and child of the accused. He made no such reference in his charge as the copy in evidence will show. Mr. Akerman testifies that he did, but he has plainly confused what was

said in directing the mistrial with what was said in the instructions to the jury. A copy of both have been submitted to the Committee.

FINES OF KEARNEY WRIGHT, EMMA POWERS AND C. R. MULHOLLAND.

Kearney Wright, the assistant janitor employed by the custodian to keep the court-room clean, was asked if he had ever been fined. He replied (Stenographic Record, p. 145) :

"I remember, sir, once I was fined. I left the cuspidors off one evening after cleaning them * * * an oversight * * * I was brought up and fined one dollar, but I did not pay it. The Judge fined me because I left the cuspidors foul." (Stoengraphic Record, p. 146.)

He was asked if he was ever required to give a bond. He replied (Stenographic Record, p. 148) :

"I never was required to give a bond, because if I had I would have known it, because I see Mr. Erwin try cases every day and give a bond, and I have assisted my friends in getting up bonds."

Emma Powers, who cleans up the court-room, says she has been so engaged for twenty-five years. She was asked by the Chairman if the Judge had ever fined her for contempt for failing to clean up the room. Emma Powers replied (Stenographic Record, p. 149) :

"He told Mr. Tucker something about it, Colonel, but he never said anything to me. Mr. Tucker said that the Judge said I would have to pay a dollar because the court-room was not clean." (Stenographic Record, p. 150.)

She says she gave Mr. Tucker, the Chief Deputy Marshal, a dollar, but that Mr. White, Marshal, gave the dollar back to her.

She was asked by the Chairman if she ever had to sign a bond. She replied (Stenographic Record, p. 151) that year before last Mr. Tucker said "I had to sign a bond, but

I told him I do not know anything about that. I did not sign it. I think he said it was ten dollars, but I told him I did not have ten dollars, and Mr. Tucker said it seemed like it was a joke. I thought it was a joke."

On page 153 of the record is what purports to be an order of Judge Speer imposing a fine of \$10 on Kearney Wright and Emma Powers, and suspending the collection of the fine until the further order of the court. This is signed April 14th, 1910.

Emma Powers says (Stenographic Record, p. 155) that Mr. Erwin "just laughed when I came and told him that I must pay ten dollars. I told him I did not have any ten dollars to pay and then he laughed and said it was all off."

Mr. Tucker was sworn (Stenographic Record, p. 533), and produced his cash book from the Marshal's office showing fines imposed on Kearney Wright, janitor, \$1.00, and on Emma Powers, charwoman, \$1.00, under date of December 10, 1910.

Mr. Tucker said (Stenographic Record, p. 544) Mr. White handed him the money and said Judge Speer had paid it for Kearney and Emma.

George F. White (Stenographic Record, p. 1309) says that Judge Speer paid the fine of Kearney and Emma.

Mr. Tucker produced his cash book showing that a fine of \$3.00 was imposed on C. R. Mulholland, bailiff, on December 10, 1910. He was drunk in the court house in Savannah, and was also drunk on the train coming up from Savannah. Mr. White will testify that he was also drunk in the court house on the morning after he was fined \$3.00.

The Committee will not find it difficult to discover that these incidents were part of a good-humored effort by Judge Speer and the court officers to persuade the colored janitor and janitress to keep the court room clean and in a proper sanitary condition. This is rather difficult with the kindly but somewhat self-indulgent help of this sort. Yet, the inspectors of public buildings have often commended the cleanliness and care with which the court rooms and offices in the Southern District of Georgia are kept.

The Committee, doubtless, has observed this. It here appears that the small fines collected from Emma and Kearney were actually paid by Judge Speer himself.

The case of Mulholland, a bailiff, was a little more serious. He was drunk in and around the court-room when on duty, drunk on the train and forced himself into the sleeping-car where the Judge and the court officers, with some of the ladies of their families, were returning from Savannah. The Marshal will testify that he was drunk in the court-room the Monday following when the fine of \$3.00 was imposed.

OPPRESSIVE CONDUCT IN ALLOWING MONEY TO REMAIN ON DEPOSIT WITHOUT INTEREST IN BANKS IN WHICH RELATIVES AND FRIENDS WERE INTERESTED.

Complaint is made by W. A. Huff, that the proceeds arising from the sale of the property of the defendants in the case of W. L. Bidwell, *et al. vs. W. A. Huff, et al.*, were deposited in the Commercial National Bank, of Macon, the registry of the court, and at that time the only general depositary for such funds in Macon, and permitted to remain on deposit without interest pending an appeal from the District Court to the Circuit Court of Appeals from an order confirming the sale, and pending other proceedings prior to the final distribution of the fund. A statement of this litigation appears elsewhere in this defense.

The sale of this property was made on the first Tuesday in December, 1909, in pursuance of a final decree entered on January 6, 1906, affirmed by Circuit Court of Appeals April 12, 1907 (151 Fed., p. 563), and Supreme Court United States March 17, 1909 (214 U. S., p. 528). The sale was confirmed by Judge Speer on December 11, 1909, and the proceeds deposited in the registry of the court. An appeal was again taken by Huff to the Circuit Court of Appeals, and the order of Judge Speer confirming the sale

was affirmed by that court, April 15, 1910 (176 Fed., p. 1022), and appeal to Supreme Court of United States denied June 1, 1910 (180 Fed., p. 374). Then litigation ensued over the distribution of the proceeds, but the fund was in large part distributed under order of May 1, 1913. Nevertheless several appeals are now pending in Circuit Court of Appeals as to the distribution of the remainder.

The two instances where the Judge is sought to be criticised for failure or refusal to allow the investment of funds in the registry of the court arise out of the testimony of Colonel Garrard at Savannah, and the testimony in relation to the Huff case, a portion of which was heard at Macon, and a portion at Savannah.

The Commercial National Bank of Macon had been made the registry of the court, by order of April 2, 1909, more than eight months before the sale of the Huff property and the collection of the proceeds. Since at the time it was made the registry of the court this bank was the only general depository, Judge Speer had to make it the registry or remit all funds collected on *mesne* or final process in the Western Division to the registry at Savannah, in the Eastern Division.

The law regulating the investments of money in the registry of the court is in the following language:

“All moneys paid into any court of the United States or received by the officers thereof, in any cause pending or adjudicated in such court, shall be forthwith deposited with the treasurer, an assistant treasurer, or a designated depository of the United States, in the name and to the credit of such court, provided that nothing herein shall be construed to prevent the delivery of any such money upon security, according to agreement of parties under the direction of the court.”

Revised Statutes, Sec. 995.
5 Fed. Statutes *anno.*, page 70.

“No money deposited, as aforesaid, shall be withdrawn except by order of the judge or judges of said courts respectively, in term or in vacation to be signed by such judge or judges, and to be entered

and certified of record by the clerk; of which it was drawn. And it shall be the duty of the judge or judges of said courts, respectively, to cause any moneys deposited as aforesaid which have remained in the registry of the court unclaimed for ten years or longer, to be deposited in a designated depositary of the United States, to the credit of the United States."

Revised Statutes, Sec. 996.
5 Fed. Statutes *anno.*, page 71.
Hutley vs. Edwards, 160 Fed., p. 619.

In each of the instances referred to in the testimony the money in question had reached the registry of the court and had been deposited in a designated depositary of the United States as required by law. The law required it there to remain until distributed by appropriate orders or decrees, duly entered in the cause. There is a proviso, however, that the court might deliver the money thus deposited upon security when the parties agreed that this should be done and the court directed it. That is, the withdrawal of the fund from the registry of the court required three things: First, the agreement of the parties; second, the tender of security; and third, the direction of the court. It was not the purpose of this provision to withdraw from the discretion of the court the determination of the custody of the fund. If the parties agreed upon the withdrawal of the fund and security was offered, the judge would have the right to reject the proposition for the reason that the security offered was insufficient, or if the security was deemed to be sufficient, for the reason that under all the circumstances of the case it would not in the opinion of the judge be to the interest of all concerned to withdraw the fund for investment. The purpose to be accomplished by the court relative to such fund was to see that it finally reached the parties entitled when appropriate and final decrees were entered, and it is the duty of the judge to exercise discretion in such a way that the possibility or probability of loss would be reduced to a minimum, and that when the time for the final decree or distribution

arrived that the fund would be available and subject to the direction of the court. That is to say, that the loss of interest upon the fund was to be compensated by the fact that the fund was in the custody of the court and absolutely safe and ready to be delivered when the time for the distribution arrived.

In the case referred to by Col. Garrard in his testimony, the Judge exercised the discretion which the law vested in him and held the fund in the registry of the court where it was absolutely safe, and declined to allow the same to be withdrawn, and placed in other banks at interest where it might have been reasonably safe, but its safety was not as absolute as in the first instance. This was certainly not an abuse of discretion, and even if it should be deemed that the discretion was abused it was a matter which was subject to review and correction by a reviewing court. It is to be noted that there is no suggestion whatever that the Judge was interested directly or indirectly in the bank which was the designated depositary in this case, and no friends or relatives were interested therein, and there is not the slightest hint in this case of anything which might be tortured into an improper motive. All that appears is that the matter was informally presented to the Judge, and for reasons which were satisfactory to him and which were the basis of the exercise of his discretion, he declined to allow the fund to be withdrawn from the registry. It is also to be noted that the matter, as stated, was referred to him simply informally, and he declined it, giving the reasons which appear in the testimony of Col. Garrard and in his own testimony, and at most, this transaction cannot be construed to be anything else than an error of judgment and an exercise of discretion which might not have been done by another judge similarly situated.

In relation to the fund which was deposited in the registry of the court in the Huff case, there was never any agreement of the parties or offer of security or even application to the court asking for the withdrawal and investment of the fund. The evidence of Mr. Felder, counsel for

Mr. Huff, establishes these facts conclusively, and the statement of Mr. Felder on the hearing before the Special Master when the matter of the fee of Messrs. Hall & Wimberly was under investigation, shows conclusively that there was no desire on his part to withdraw the funds from the registry, even after a suggestion by the Special Master was made that there might be a partial distribution in order to pay creditors whose claims were undisputed, and thus save the interest which was accruing upon such claims. In this case there is the suggestion that the Judge was holding this without interest in the depositary, for the reason that he had relatives and friends who were stockholders and officers in the bank. The bank which was in this instance the registry of the court, was one that was designated as a depositary before the sale of the Huff property, before it was foreseen that there could be any fund of this character subject to be deposited, and under the mandatory requirements of the statute the Judge was compelled to order the deposit in this bank there to remain until distributed according to law, or withdrawn by agreement of parties under the direction of the court.

In the one case, that testified by Col. Garrard, there was an exercise of discretion which left the fund in a bank with which the Judge had not the remotest connection and in which he was not in any way interested directly or indirectly. In the other case, he was not given the privilege, if it may be so denominated, of exercising a discretion, the defendant himself and his counsel failing and refusing to make any application to the court which would bring to the Judge the right to exercise a discretion in reference to the matter. In the one case, there is no hint of an improper motive. In the other case, there is a charge of an improper motive, when the Judge was powerless under the circumstances to do otherwise than allow the fund to remain where the law compelled it to be deposited.

THE E. B. HARRIS CASE.

E. B. Harris was a shoe dealer in Macon. He owned a valuable corner lot upon which his place of business was located. In 1906 he contracted to sell this property for \$36,000 to C. S. Henry, of New York, Henry being represented in the negotiations by J. Clay Murphey, as agent. Murphey brought suit for specific performance in the State Court, but the suit was dismissed because brought in the name of the agent instead of the principal. (*Murphey vs. Harris*, 133 Ga., 364.) Thereupon, Henry filed a bill in the United States Circuit Court for specific performance. The case was referred to a Master, who reported in favor of Henry. Numerous exceptions to the report of the Master were filed. In this litigation Henry was represented by W. D. McNeil and M. Felton Hatcher, and Harris by Miller & Jones. While the equity case was pending on Harris' exceptions to the Master's report, Arthur L. Dasher, Jr., on behalf of a number of merchandise creditors filed an involuntary petition in bankruptcy against Harris. Harris filed his schedules, and submitted an offer of composition before adjudication. A meeting of creditors was held, at which a large majority, both in number and amount, agreed to accept the composition offer of 21 per cent. The Referee certified the facts to the presiding Judge without recommendation. Objections to the confirmation of the composition were filed by a number of creditors upon the ground of fraudulent concealment of assets on the part of the bankrupt. While the application for confirmation, with the objections thereto, was pending, A. L. Dasher, Jr., and W. D. McNeil, representing the Macon Shoe Company, *et al.*, filed an application for a Receiver, reciting the history of the bankruptcy cause up to that time, and alleging that Harris had sold a short time before his bankruptcy a large stock of merchandise in a business which he conducted in Atlanta, and had not accounted in any way for the pro-

ceeds; that he was concealing, and had concealed, his assets; that he had made preferential payments at a time when he knew he was insolvent; that his books and records were improperly kept; that he had misrepresented his condition to his creditors, and as result of his concealment of his true condition and his misrepresentation the creditors had been induced to accept the offer of composition; that it was necessary for the appointment of a Receiver in order that the assets might be protected, and that creditors might have an opportunity to investigate and ascertain the true condition of the bankrupt.

Upon this application, after considering evidence and the testimony taken before the Referee, Judge Speer appointed George F. White, Marshal, as temporary Receiver, and directed him to take charge of the assets of the bankrupt, the Court by order giving to the defendant leave to apply for a modification or cancellation of the order appointing the temporary Receiver on five days notice. The Receiver applied for leave to employ counsel, representing that Harris had sold a business conducted by him in Atlanta of considerable value immediately prior to the filing of the petition in bankruptcy, and that the bankrupt had testified before the Referee that he had no books or other records in connection with this business or showing disposition of the proceeds thereof. Upon this petition, and by request of the Receiver, Judge Speer authorized the receiver to employ counsel and he employed W. D. McNeil.

Judge Speer declined to confirm the offer of composition in advance of adjudication, upon the ground that the circumstances surrounding the failure were so suspicious that creditors should have the full opportunity of examining the bankrupt at the creditors meeting before their rights should be concluded. The bankrupt was given, however, leave to renew the application to confirm the composition after adjudication should be had and the bankrupt should be examined at the creditors meeting.

An adjudication was had. Cook Clayton was elected Trustee by the creditors, and through Alexander Akerman

applied to the Court for leave to employ counsel, requesting the designation of Mr. Akerman and Mr. Arthur L. Dasher, Jr., as such counsel, and the authority was accordingly given. The Trustee applied for leave to sell the stock of merchandise of the bankrupt. The order was granted after proper notice, and the stock was sold, the highest bidder offering \$9,000. Harris, through his counsel, Miller & Jones, objected to the confirmation of this sale, upon the ground that no final action had been taken upon his application for composition. The attorneys for the Trustee submitted a bid for the merchandise on behalf of the Macon Shoe Company, raising the bid of the purchaser at public sale by some \$3,000, this bid being conditioned, however, upon the dismissal by the Trustee of the exceptions to the report of the Master in the Equity case of Henry *vs.* Harris. This proposition was objected to by Harris, the bankrupt, and a number of his creditors, upon two grounds: First, that creditors had had no notice as was required under the Bankruptcy Act in order to settle disputed claims; second, upon the ground that the amount offered was not commensurate with the value of Harris' equity in the property involved in the Henry-Harris litigation. Harris further objected upon the ground that his offer of composition had not been finally acted upon. The purchaser at public sale insisted that he had a right to the property, and that the sale to him should be confirmed.

Judge Speer refused to authorize the acceptance of the offer of the Macon Shoe Company, and referred the question of confirming the public sale of the stock to the Referee. The purchaser voluntarily raised his bid to \$10,200, and the sale of the merchandise was confirmed at that figure.

The Trustee was made a party to the equity cause, and Mr. Akerman, representing the Trustee, agreed with Mr. McNeil, representing Henry, on a settlement of the equity case upon the payment by Henry of \$4,700 in addition to the original contract price of \$36,000. Mr. Akerman presented this application to Judge Speer, with an order that a meeting of creditors be called to consider the question.

Judge Speer declined to sign the order as prepared, stating that he did not think the question of the Trustee's rights in the pending litigation should be submitted to creditors as they were not advised of the value of the property, would not understand the legal questions involved, and were not in position to intelligently act in the matter. He stated, however, that he would prepare an opinion and some appropriate order on the application. Mr. Akerman advised Mr. McNeil that Judge Speer would probably decline to grant the application. Thereupon, Mr. McNeil went to Judge Speer, and withdrew the offer of settlement, giving as his reason that he did not wish the Court to file an opinion in the case. Before Mr. McNeil's visit, Judge Speer had already prepared an opinion, in which he declined to pass an order submitting the proposition of settlement to the creditors. When Mr. McNeil withdrew the offer of compromise, this opinion was sent by Judge Speer to the Macon News for publication, the purpose being to acquaint the creditors of Harris with the true situation and their interest in the property. By appropriate order Judge Speer also directed the employment of Malcolm D. Jones, of Miller & Jones, who had represented the bankrupt in the entire litigation with Henry, both in the State and Federal Courts, and who had prepared the exceptions to the Master's report, to assist the counsel for the Trustee on the trial of these exceptions in the equity case.

When the equity case came on for a hearing, attorneys for Henry filed an affidavit of disqualification under Section 21 of the Judicial Code, the affidavit being based on the publication of the opinion in the Macon News above referred to. In an opinion published *sub nomine* Henry *vs.* Harris, et al, 191 Federal, 868, Judge Speer held the affidavit, which did not allege *personal* prejudice or bias, insufficient. He also reviewed at some length the history of the litigation, the reasons which actuated him in declining to approve the several terms of settlement which had been proposed and his motives in publishing the opinion in the Macon News. It is this opinion to which Mr. Akerman takes ex-

ception in his testimony on page 1102 of the printed record, but it is submitted that the facts of the case fully justified whatever criticism the opinion may contain of the conduct of Mr. Akerman as one of the counsel for the Trustee, and that the opinion itself is a complete answer to every suggestion of improper conduct on the part of Judge Speer in connection with the case.

Judge Speer having declined to disqualify in the case, and the exceptions to the Master's report being regularly assigned for hearing, the Judge directed the counsel to proceed. Counsel for the complainant, Henry, declined to proceed with the cause, and the Court thereupon dismissed the case for want of prosecution.

To the order dismissing the case an appeal was taken to the Circuit Court of Appeals, and a petition for mandamus was filed by Henry for rule against Judge Speer to require him to send the affidavit of disqualification filed by Henry in the equity case and the proceedings thereon to the Senior Circuit Judge and to desist from retaining or exercising further jurisdiction in the cause. Before the trial of these proceedings in the Court of Appeals, Mr. Akerman withdrew from the case, and Judge Andrew J. Cobb was employed to succeed him as counsel for the Trustee.

The Court of Appeals denied the petition for mandamus, holding the affidavit of disqualification insufficient, and that it was the duty of the trial Judge to pass upon its sufficiency.

Henry vs. Speer, Judge, 201 Federal, 869.

The Court of Appeals reversed Judge Speer on the main case, holding that the findings of a Master in Chancery are *prima facie* correct, and that the burden of sustaining exceptions, where the finding was in favor of complainant, rests on defendant, and the Court was not warranted in dismissing the case for want of prosecution without considering and disposing of these exceptions.

The case being reinstated in the District Court, some question was raised as to the jurisdiction of the Court, it being suggested that the complainant, Henry, before the bringing of the suit had made a binding contract to sell the

property to Neel, a resident of Georgia. As jurisdiction had been entertained on the ground of diverse citizenship, this raised a question as to the jurisdiction. While this question was under consideration, propositions for settlement were renewed. Henry offered to pay \$14,000 in addition to the contract price. The Trustee agreed to recommend the acceptance of \$28,000 additional. With these propositions pending, the case was called, and the Court inquired as to the probability of reaching a settlement. The respective offers of the parties were stated. Judge Speer then suggested that the difference be split and that a decree be taken settling the case upon the payment by Henry of \$21,000 in addition to the original contract price. This was agreed to by all parties, a consent decree taken, by which it was provided that the property should be sold by the Trustee as a part of the bankrupt's estate, and that all over and above the amount agreed to be paid by Henry should be paid over to him, or to the parties to whom he had sold. The property was sold, and was bid off for \$66,000. Subsequently, Murphrey, by whom the property was bid in, is reported to have sold to the Citizens National Bank for a commission of \$7,500. This, however, had nothing to do with the administration by the Court, but was a mere private transaction with which the Court was in no way concerned, and about which it was not advised.

The total amount realized from Harris' estate, as shown by the report of the Trustee, was \$78,842.75. Out of this sum mortgages on the property aggregating approximately \$40,000, were paid, and after paying the costs and expenses of the litigation the balance will be paid to the unsecured creditors of the bankrupt, less the bankrupt's exemption of \$1,600 which has been allowed. The unsecured creditors, who were offered 21 per cent. by the bankrupt, have already been paid 35 per cent., and the funds in hand will pay an additional 12 per cent.

The total fees paid to attorneys for petitioning creditors, for the bankrupt, for the Receiver and the Trustee amounted to \$6,100. These fees were fixed by a Special Master,

according to the usual practice in this District; no exceptions were filed. The original bill for specific performance was filed October 23, 1909, the involuntary petition in bankruptcy March 27, 1911. The final decree in the equity cause was passed on April 5, 1913, and the consent order under which the Trustee disbursed the proceeds of the sale was dated May 22, 1913. There are several issues in the bankruptcy case yet undisposed of, and the services of counsel have not yet ended, though their fees have all been paid in full.

Harris, the bankrupt, in a long written statement criticises the conduct of Judge Speer in this case. On cross-examination it appears that the following are his specific complaints:

1: That Judge Speer refused to confirm the composition of 21 per cent., though the same had been accepted by a large majority, possibly 90 per cent., of the creditors. See printed record, page 1037.

2: That Judge Speer appointed Malcolm D. Jones, one of Harris' attorneys, to represent the Trustee in the Henry *vs.* Harris equity case. See printed record, page 1044.

3: That Judge Speer approved the settlement by which Henry paid \$21,000 over the contract price, instead of directing the Trustee to continue the litigation. See printed record, pages 1044 and 1046.

He also thinks the compensation paid attorneys was excessive, and that the attorneys and officers employed were favorites.

The results, accomplished show that Judge Speer was unquestionably right in refusing to confirm the compensation. The offer was 21 per cent. Creditors will receive 47 per cent. Besides, there were grave charges of concealing assets, filing fictitious claims, misrepresenting his true condition, and failing to keep books, lodged against the bankrupt, which of themselves would have justified the Court in refusing to confirm the composition. The offer of composition took no account of Harris' equity in the law suit, from which \$21,000 was realized for the creditors.

The employment of Malcolm D. Jones to represent the Trustee was manifestly proper. He had represented Harris in all litigation over the Henry contract. He prepared the exceptions to the Master's report, and surely no one was better qualified to sustain these exceptions than he. Messrs. Akerman and Dasher, who represented the Trustee, had no faith in their ability to sustain these exceptions, and had recommended the dismissal of the exceptions upon the payment of \$3,000. They could hardly be expected to wage a winning fight, and needed assistance. Harris, himself, until his composition was finally declined, was more anxious than any one that these exceptions should be sustained.

The third criticism, that the Court authorized the settlement for too small an amount, coming from the source that it does, is not entitled to much consideration. It was wholly immaterial to the bankrupt what the property brought. The Court, by refusing to authorize the settlement proposed by the Trustee and recommended by Messrs. Akerman and Dasher, had succeeded in realizing a sum more than double the amount which would otherwise have gone to the unsecured creditors. Harris estimated the building as being worth \$70,000 to \$75,000. It brought on public sale \$66,000. Surely, the settlement of the contest over the title to this property, with a Master's report against the contentions of the Trustee, for \$57,000, especially where all parties at interest consented, can hardly be considered a very bad settlement or a grave abuse of judicial discretion.

The statement that the estate was frittered away in attorneys' fees paid to favorites is unsupported by the facts, the total amount paid being less than 10 per cent., and the services being of unusual value and extending over a period of more than four years, involving a great deal of time and attention, the cases in their different ramifications being complicated and the issues numerous.

The suggestion that the officers and attorneys were favorites is likewise not borne out by the facts. The Receiver was United States Marshal, and the Bankruptcy Act expressly authorizes the appointment of a Marshal to take

charge of the estates of bankrupts. The Trustee, while a friend of the Judge, was elected by the creditors. Messrs. A. L. Dasher, Sr., and A. L. Dasher, Jr., represented the petitioning creditors, and were paid the largest fee. The bankrupt was represented by Miller & Jones. There is certainly no suggestion anywhere in any of the testimony delivered before the Committee that any of these attorneys was a favorite of the Court. W. D. McNeil, whose wife is a distant cousin of Judge Speer, filed the petition for the appointment of a Receiver, and was employed by the Receiver as his counsel. As the Court declined every proposition submitted by Mr. McNeil or his client, and as Mr. McNeil felt sufficiently aggrieved to file an affidavit of prejudice on the part of the Judge against his client, it can hardly be said that he was playing the role of a favorite in this matter at least. Mr. Akerman was greatly aggrieved because the Court declined to approve the settlement which he recommended, and thought the Court's opinion as published in the Federal Reporter was a serious reflection upon his professional integrity. (Stenographic Report, p. 1102.) Malcolm D. Jones was not a favorite, and the propriety of his appointment to represent the Trustee is manifest. After the retirement of Mr. Akerman from the case Judge Cobb was appointed to represent the Trustee on the appeal in the Circuit Court of Appeals and to resist the petition for mandamus against Judge Speer. The only counsel for the Trustee then were Arthur L. Dasher, Jr., attorney for petitioning creditors, who had concurred in the several recommendations of Mr. Akerman for the settlement of the equity case, and Malcolm D. Jones, attorney for the bankrupt. Surely the Trustee, on the important issues pending in the Court of Appeals was entitled to unbiased counsel not otherwise connected with the litigation.

HECHT VS. JOSEPH DRY GOODS COMPANY.

Criticisms of Geo. S. Jones.

In this case again Judge Speer most respectfully refers the Committee to the record and his opinions filed October 25th and November 6, 1902, which fully set forth the grounds and which seem to make his action inevitable.

The bill contained an application for injunction and the appointment of a Receiver. The Code of Georgia, Section 5479, on this topic, provides:

"Under extraordinary circumstances a Receiver may be appointed before and without notice to the Trustee or other person having charge of the assets, the terms on which a Receiver is appointed shall be in the discretion of the Chancellor."

There is a strong line of decisions to the effect that the Courts of the United States may utilize remedies provided by State laws. If, however, this is not deemed applicable it is submitted that the Georgia rule does not substantially vary from the general rule in equity in such matters.

Adolph Joseph, the defendant, was already debited in the commercial world with five failures. The bill was filed by Olin J. Wimberly, one of the most accomplished equity lawyers the State has ever known. With him was Hon. John I. Hall, formerly under Mr. Cleveland's administration an Assistant Attorney General of the United States, an ex-Judge of the Superior Court, and for many years before his death the Division Counsel of the Central Railroad, and General Counsel of the Georgia Southern and Florida Railway Company. The bill itself was most carefully and fully drawn. The equity of the complainant was fully set forth. The correctness of his demands was not in dispute. A notable averment was that six weeks before the bill was filed the stock of merchandise of the Joseph Dry Goods Company, in which the plaintiff's equity existed, insured for the sum of

\$32,500, "caught fire"; that Joseph collected \$23,500 in cash from the insurance companies, and that he was rapidly selling the remainder of the merchandise as a fire damaged stock, and was rapidly converting it into money; that the sales had already amounted to \$11,000; that it was a sacrifice sale, and the newspaper advertisements of the sale were annexed which showed these facts. It was alleged that from the proceeds of the stock he had paid a large debt owing by his concern to one Samuel Evans, amounting to \$14,000; that the corporation of the Joseph Company on which the plaintiff had his claim, was practically dissolved, and yet Joseph was incurring fresh liabilities to the irreparable injury of the plaintiff; combination and conspiracy was charged. While all of this was true, as alleged, Joseph had on hand a large sum arising from the insurance and the sacrifice sale, and he persistently refused to pay the plaintiff; that Joseph was a man who had at numerous times failed for large sums of money; that he was wholly unsafe to be trusted with the funds of others; a wild and reckless speculator in cotton and that such speculation was responsible for his periodical disasters, and was now using money liable to the plaintiff's demand to indulge in speculation; that he had refused to the plaintiff the opportunity to inspect his books or to give him any information about the business.

The bill alleges

("That said threatened and intended wrongs, unless immediately prevented by the protection of said property through the appointment of a Receiver will greatly and irreparably injure your orator, and will result in the loss and destruction of his security, rights, title and interest held by your orator as herein before stated."

The prayer was for the appointment of a Receiver to protect, take charge of, hold and preserve all the property of the Joseph Dry Goods Company and the books and papers.

The second prayer was as follows—

"and for as much as the danger is immediate and the consequences will be irreparable, your orator prays that the Court appoint at once a temporary receiver to take charge of, preserve, and keep the moneys and other property, and the books and other papers of the said Joseph Dry Goods Company until a hearing can be had."

The Court required the plaintiff to give bond and provided for the earliest possible hearing. Two days thereafter on motion of Mr. Jones, and his associates, the order was modified restoring all assets, except the money in hand, to the respondent. The Receiver was required to give bond. He was a man of the highest character, Mr. W. J. Grace, the brother-in-law of the witness, Mr. Jones, and afterwards Solicitor-General of the Circuit.

It is true that the Court suggested that the case should be settled, and when asked to do so by Mr. Roberts, leading counsel for the respondent, intimated the amount of the allowance that would be made in case a settlement was effected.

It may be true that the Court spoke to Mr. Jones of the habit of such great lawyers as Linton Stephens, Robert Toombs, and Benj. H. Hill, to settle litigation when they could. Jones had been a law student of Judge Speer and nothing more than a kindly admonition was intended. This was said in the privacy of his study at his home and in the presence only of one or two of the counsel.

As it will appear from the record the counsel for both sides had not only been in conference for the purpose of a settlement, but apparently took the suggestion of the Court on this line in good part and promised to consider the matter. Instead of doing this, and while the hearing was still pending, Mr. Jones applied to the Circuit Judge for an order of appeal from the decree appointing the temporary receiver. He had previously made application to Judge Speer. It does not appear that he informed Judge Pardee that the latter application was pending. When the case came before the Circuit Court of Appeals, that Court, while reversing Judge Speer, closed its opinion in the following language:

"On an appeal like this from an interlocutory order appointing a receiver, the Appellate Court may dispose of the case on its merits and dismiss the bill; (*Smith vs. Vulcan Iron Works*, 165 U. S., 518) but we do not understand that it is required to do so. The record shows, and it was admitted in argument at the bar, that Joseph is indebted to the plaintiff, though not in so large a sum as claimed,—*a debt which in duty and good conscience he should pay*. We are reluctant to dismiss the bill when the plaintiff may be able to so amend it as to obtain some of the relief for which he has prayed. While the bill in its present form should be dismissed for want of jurisdiction, we do not hold that it may not be so amended as to avoid the objections to it."

Hecht vs. Joseph, 120 Fed., 760.

Mr. Jones testified that Joseph afterwards settled the debt of the plaintiff.

GIBSON VS. HILL.

On May 1st, 1911, John Gibson, under indictment for burglarizing a postoffice, filed a verified petition in the United States District Court setting up that he was arrested near Cordele, Ga., and had employed Mr. J. T. Hill, an attorney at law of Cordele, to represent him, and had paid him \$75.00. According to his petition, Mr. Hill was given a check on a bank in Kentucky and when the check was paid, Mr. Hill agreed to give him \$25 out of the proceeds, thus making the fee of Mr. Hill \$50. The petition further set up that a preliminary hearing was had before a United States Commissioner at Albany, but that Mr. Hill did not appear and represent him at that hearing, and that later when in jail he had requested Mr. Hill to assist him in getting a bond, which Mr. Hill also failed to do, and the petition further averred that Mr. Hill rendered him no service whatever as an attorney, and had failed to pay him the \$25, which he was entitled to out of the proceeds of the check given to Mr. Hill. A *rule nisi* was issued requiring Mr. Hill to show cause why

this sum should not be refunded to John Gibson. Gibson had in the meantime employed Mr. W. D. McNeil to represent him in the burglary case. The *rule nisi* was made returnable on May 3rd, but the burglary case referred to was on trial and the hearing of the rule against Mr. Hill was postponed until that case had been concluded. Mr. Hill then filed an answer, which the Committee will have before it. On the hearing evidence was taken and Judge Speer announced from the bench (Stenographic Record, p. 774) : "I am inclined to think that Mr. Hill would be entitled to a retainer of one-half of the amount paid, but that as he did not render the services he ought to have paid back the other half to his unfortunate client. If he will do that, I will have no further order in the premises."

The Code of Georgia, Section 4953, provides :

"Unless otherwise stipulated, one-half of the fee of any cause is a retainer, and due at any time, unless the attorney, without sufficient cause, abandons the case before rendering services to that value; but in cases where he has rendered such service and cannot render the balance of service—from the act of his client, providential cause, election to office, or removal out of the State,—he is entitled to retain the amount, or a due proportion, if collected, or sue for it and collect it, if not; where no special contract is made the attorney may recover for the services actually rendered."

Judge Speer thought, under this section, that Mr. Hill was entitled to retain one-half of the amount paid him by Gibson as a retainer. Gibson had just been sentenced and had been, or was, about to be sentenced to the penitentiary for a number of years. Mr. Hill, according to his own testimony, had rendered very little, if any, service to his client. Judge Speer thought a suggestion to Mr. Hill would be sufficient to cause him to pay this small amount to his unfortunate client. Mr. Hill, however, did not take this view of it, and through Mr. J. R. L. Smith, his attorney, who was also a witness before the Committee, rudely replied, "He won't do that."

Then, according to the record, page 774, Judge Speer remarked:

"Then I will adjudge him in contempt, and direct the Marshal to take—"

Mr. Smith interrupted the Judge by saying:

"I mean, your Honor, he won't do that without an order. I understood your Honor to say that if it was paid you would not take further orders."

Judge Speer replied:

"I misunderstood you, I will have to order him to do it. I prefer not to do that, I want to give him an opportunity."

No order was in fact signed, and on the following Monday morning, Judge Speer stated that he was not altogether satisfied with the evidence and directed a re-hearing. No effort was made to have a re-hearing, probably due to the fact that Gibson was sent to the penitentiary and was not available as a witness.

Thereafter, Judge Speer wrote a letter to Mr. Hill, dated Highlands, N. C., September 1, 1911, in which he says:

"I also enclose an order setting aside my decision in the rule brought against you by Mr. W. D. McNeil at the instance of John Gibson, in which I had granted a re-hearing. Mr. McNeil has not thought proper to press the matter, and I am very glad to believe that my original opinion, which, however, was never confirmed by an order, was erroneous and that injustice was done you. I regret this very much, but make the only reparation I can under the circumstances." (Stenographic Record, page 779.)

Mr. Hill says (Stenographic Record, page 789): "Since that time I have had occasion to practice in Judge Speer's court on one or two occasions, and have had courteous treatment."

Mr. Hill also testified that he did not raise the question of jurisdiction, "feeling that when the facts were investigated, I would be exonerated from any such charge." (Stenographic Record, p. 781.)

Under the law of Georgia, Section Ga. Code, 4954:

"Where attorneys retain in their hands the money

of their clients, after it has been demanded, they are liable to rule (and otherwise) as sheriffs and incur the same penalties and consequences."

The petition in this case was filed by Gibson through his attorney, W. D. McNeil, now State Senator from this District, and Mr. McNeil evidently believed that the court had jurisdiction under this section of the Code of Georgia, particularly as it was alleged that a part of this money was held in trust by Hill for Gibson, in addition to the amount paid by him as a fee.

THE CASE OF DEPUTY MARSHAL KELLY.

Col. J. W. Preston criticized Judge Speer for what he denominated partial conduct in this case. That the witness' recollection of the case, which was tried twenty years ago, is far from accurate, is shown when his criticisms in the light of the record are considered. He first stated that Judge Speer had dominated the jury, and practically commanded a verdict. (Stenographic Record, p. 458 and 460.) On his attention being called to the fact that the case was a *habeas corpus* tried before the Judge without a jury, he stated that Kelly and his posse were guilty of murder, the nature of the proceeding and the details he had evidently forgotten. (Stenographic Record, p. 467.)

The case was an outgrowth of the celebrated Dodge land litigation, which in one form or another and with its various ramifications, has been pending in the Southern District of Georgia during the entire judicial career of Judge Speer, the original bill to quiet the title to the Dodge lands, comprising three hundred thousand acres lying in five counties, having been filed prior to Judge Speer's accession to the bench. This litigation in extent, in the variety of questions raised, in the beneficial results accomplished, is scarcely without a parallel in the annals of the Courts of the country, and it is significant that notwithstanding the bitterness

with which many of the issues have been fought, the large number of parties and the vast interests involved, the great number of counsel who at one time or another, and in one branch or another, have been engaged in the litigation, no litigant or attorney, save Col. Preston, has criticized any ruling of the Court or the conduct of Judge Speer in his handling of the complicated and grave issues involved. It is submitted that this litigation of itself is a monument to the presiding Judge and a sufficient refutation of most of the accusations which have been brought against him.

As a result of the decrees and rulings of the Court, the title to the vast body of the Dodge lands, an empire in itself, has been settled and quieted. A gigantic conspiracy, participated in by hundreds of people, directed by a shrewd and capable attorney, and the Sheriff of one of the counties, which by forgery, fraud and violence, not stopping at murder itself, undertook to deprive the non-resident owners of these lands and to establish a sort of squatter sovereignty throughout the counties, was run down and crushed. A large section of the State has been rescued from virtual anarchy, and converted into a peaceable, law-abiding community. Values of the lands, which were wholly unsalable on account of the defects and conflicts in the title, and the efforts of the conspirators, have been greatly enhanced. Towns and villages have sprung up in the midst of well tilled farms, where dwell a contented, prosperous and happy people.

Kelly and a posse, acting in pursuance of the laws of the United States and inobedience of the orders of the Court, undertook to execute warrants for the arrest of Lucius Williams, a notorious outlaw, and his sons. Their claim was that in making this arrest and in order to protect their own lives, they were forced to kill Williams, who had been charged with the highest crimes known to the law. They were charged with murder in the State Courts, and Judge Speer, on the authority in re Neagle, 135 U. S., page 1, and numerous other cases, released them.

A vivid picture of the conditions which existed at the time

of the attempted arrest of Williams, and a glimpse at the litigation as it had progressed up to that time, is given in the oral opinion delivered by Judge Speer on the trial of the *habeas corpus*. It is reported in 68 Federal, 652, from which the following extract is taken:

"This case is the culmination of a tremendous litigation, imposing for more than ten years tremendous responsibility, and tremendous anxiety upon this Court, resulting from the fact that years ago the Georgia Land and Lumber Company, of which William E. Dodge was President, bought large bodies of land in this State, about which that company's successors in title have been compelled to appeal to the Courts for protection. These lands were conveyed by that company to George E. Dodge, and by George E. Dodge to Norman W. Dodge. All of this appears from the record before the Court. These were residents of the State of New York. A number of persons, residents of the State of Georgia, were charged with numerous acts of fraud and forgery, and violence, with the purpose to deprive these non-residents of the benefits of their investments in this State. This case had been brought before I had the honor of presiding in this Court, and was pending when I entered upon the performance of my judicial duties. It was tried. The trial lasted through many days. It was thoroughly and ably argued, and fully considered. A final decree was rendered, sustaining the title of Mr. Dodge to every foot of this land. No appeal was taken from the decision of the Court. It was, therefore, final. The decree itself, in the further progress of litigation with other parties was carried before the Supreme Court of the State of Georgia, and that Court added its high sanction to the decision of this Court, and held that the decree perfected the title of Norman W. Dodge in every foot of land described in the decree and order of the Court, and in his deeds of title. The decree itself enjoined the defendants to that bill from interfering with the lands of Mr. Dodge. For a time the decree was obeyed. But finally a gigantic system of forgery of deeds and a fraudulent seizure of the land with the attempt to establish prescriptive titles, was begun. This was done at the instigation of, and by

Luther A. Hall, a party to the original case before this Court, and who had been expressly enjoined. The matter was brought to the attention of the Court, and in a trial lasting many days the character of this man's conduct was investigated. The Court found him guilty and sentenced him for contempt of the decree to five months' imprisonment in Chatham County jail. While in that jail, as it appeared from the evidence in the trial which ensued, he concocted a conspiracy for the murder of a most amiable, excellent and valuable citizen, John C. Forsyth, the agent of Norman W. Dodge, who had been conducting the litigation.

"The conspiracy as the bill of indictment charged and the jury found, was to prevent and hinder Mr. Dodge from exercising the right to pursue his remedies in the United States Courts. The case is fully reported in 44 Federal Reporter. (U. S. vs. Hall, 44 Fed., p. 864; U. S. vs. Hall et al., p. 883; U. S. vs. Lancaster, fg., 885, s. c., p. 896.) A number of persons took part in that conspiracy. Forsyth was murdered under circumstances of the most heinous, pathetic and pitiable character. At his quiet home, and in the bosom of his devoted family, with his wife and children around him, after the evening meal, his brains were blown out by the hand of a hired assassin; and it appears in the testimony in the case at bar that the man Lucius Williams contributed \$200 to the payment of the assassins. A number of conspirators were brought before the court. They were convicted and sentenced to various terms of imprisonment in the Ohio State Penitentiary, at Columbus, Ohio, most of them for life.

"One of these men was Luther A. Hall, who in success at the bar, and ability and learning, particularly on the subject of ejectment, was somewhat notable.

"Another was Wright Lancaster, the Sheriff of the very county in which this homicide was committed, about which this inquiry is pending.

"Lucius Williams was not charged in that indictment with connection with the conspiracy, but it appeared on the trial of that case, that he had forged a number of the deeds which were used for the purpose of attacking the title of Mr. Dodge, in violation of the injunction of the Court, and the Court in its summation of the evidence to jury, referred to that fact,

and some of the forged deeds taken from the record of that trial were introduced here.

"Several years elapsed. The title of Mr. Dodge in the same lands was assailed by other parties. He filed a bill of peace against some three or four hundred defendants, alleging circumstances of trespass and wrong which he now insists claim the attention of the Court for his relief. In that case not one single contested question has yet been decided. It is pending before the Court.

"Lucius Williams was a party defendant to that bill, and when the officers went to serve upon him the original writ of subpoena, he refused to accept service, and informed the officer in violent and truculent language that he had no respect for the Court and did not intend to accept service or obey its orders. Rules day came—the day on which he should have filed his answer. He made no appearance. In the orderly progress of the case, judgment *pro confesso* or judgment by default was taken against him. No injunction had been granted when the bill was originally filed. After service of subpoena upon him, he then proceeded, as the Court was advised by the sworn petition of the plaintiff, to run off his hands, cut trees across his tramway, and otherwise threatened violence to his agents and employees. But, even then, so careful was the Court to give him every right to which he was entitled, that only a rule nisi was issued against him to appear and show cause why he should not be enjoined from committing acts of violence or trespass pending the final determination of the suit. When the young deputy went to serve the rule, he was met with a string of profanity which the Court will not repeat in this presence. The deputy was told if he ever attempted to serve any papers from this Court upon him, his life would be taken, and that if any officer of the Court came there to arrest him or his sons, it would be a question of whom could shoot first as to whom should live, Williams or the officer. Acts of violence were again committed which were brought to the attention of the Court by affidavits, and the Court this time issued an attachment for the arrest of Williams, together with a rule nisi to show cause why he should not be punished for contempt. Two of the most conservative and cool headed officers of the Court were

sent last fall to effect the arrest under the attachment. At a moment when Lucius Williams had laid aside his Winchester, the officers rushed upon him and arrested him, and slipped a handcuff on one of his wrists, and then ensued a scene of violence, struggle and resistance, and a display of indescribable profanity and utter disregard of his own life on the part of this man, which the evidence in this case has disclosed and which has never been, I presume, exceeded on any occasion of that character. Finally Williams got out his knife, and although the officer held his pistol to his breast, told him he would kill him if he attempted to cut, the prisoner did not cease for one moment in his resistance to the officer, who finally, by a quick blow of the pistol, struck the knife from Williams' hands. The officer was John A. Kelly, one of the relators. But runners had been sent out by Williams' friends. They gathered in sympathy with this desperate man. The brave officers proceeded a short distance with their prisoners, when they were surrounded by an armed mob with Winchesters, double-barrel shot guns and pistols levelled at them from every side. They were compelled to surrender their prisoner or lose their own lives. The officers, by their cool and brave discretion, and by a stratagem evaded the mob and reported the facts to the Court. The Attorney General sent a large force to arrest the parties who had rescued Williams, but after the most strenuous efforts, owing to the remote and difficult country, and the impossibility of identification, the attempt failed. Only one man, a son-in-law of Lucius Williams, was identified and convicted. The injunction was yet of force with regard to this land. A short time thereafter Mr. Dodge employed laborers to proceed with cutting the timber. Two or three men came to the land where the hands were at work, and one of them shot a poor innocent negro to death—a negro whose only offense was that he was standing on a log cutting at the obedience of a man who had employed him. He was shot through the body and died next day. Lucius Williams, in cruel and merciless language, boasted of the deed as his. The Grand Jury of this district, composed of men of high character, returned an indictment against Lucius Williams and his two sons for that offense.

"So notable had become this case that the Attorney General—the head of the law department of the Government—issued a reward for the arrest of these parties, and other rewards were added by parties to the case. The officers, however, in the absence of such reward, had not ceased their efforts to accomplish the arrest. But finally one of the prisoners at the bar, John A. Kelly, went to the neighborhood and remained there a long time—twenty-six days with but a short intermission.

"Lucius Williams and his sons were in the woods. They were constantly seen armed to the teeth with shot guns, Winchester rifles and a large revolver. They had their retreat in the depths of Ocmulgee swamp. Lucius Williams made open declaration that if the officers attempted to arrest him, he would kill them. This was brought to the attention of Kelly in command of the deputies, three in all, but that officer did not cease in his effort to perform his duty. On the day of the homicide he was near and watching the house of one of the defendants in the murder case, a son of Lucius Williams, and he saw the three men armed as usual, approach the house. He determined to make the arrest, and in the effort to make the arrest the life of Lucius Williams was taken, and upon that act the issue now before the Court is formed."

Among the papers filed with the Committee is a pamphlet prepared by Hon. Walter B. Hill, then a member of the Macon bar, and afterwards Chancellor of the University of Georgia, containing a complete synopsis of the testimony and report of the decision of Judge Speer in this case, the pamphlet having been issued shortly after the trial was had. In his introduction Mr. Hill uses this expression:

"It has always been my contention that no Judge should be condemned upon the representations of a losing party or his counsel. Unless such party or counsel has a grievance so manifest that he can induce some disinterested party to take it up, the curses of the dissatisfied litigant, however 'loud and deep,' will never hurt, and ought never to hurt the court against which they are uttered."

It is only fair to Col. Preston to say, that while he criticised the conduct of Judge Speer in this case and also in the case of United States *vs.* Roberts, the postmaster who was convicted of defrauding the Government by the issuance of fictitious money orders and the sale of stamps, elsewhere referred to in this brief, that he stated that he had not the slightest ill will against the Judge and his estimate of him is as follows: (Stenographic Record, p. 169.)

"Mr. Howard: State to the Committee your opinion of the distinguished jurist?

"Mr. Preston: I have thought, with the exception of the matter indicated by what I have stated to this Committee, that in some respects Judge Speer was the finest presiding officer I have ever seen."

"Mr. Howard: You mean judicial officer?

"Mr. Preston: Yes, sir, one of the finest I have ever known. His exalted intellect and his splendid manner on the bench always impressed me, but I did not take easily what I thought to be his imperiousness, and sometimes I became very sassy to him, and he should have put me in jail once or twice, but he did not."

THE JOHN M. BARNES CHARGE OF ATTEMPTED BRIBERY.

One of the charges announced by Mr. Clayton, Chairman of the Judiciary Committee, in his statement to the House, as appears from the Congressional Record, was "attempted bribery of officials appointed to act as custodian."

John M. Barnes, the Marshal who was removed for gross misconduct, to which Judge Speer called the President's attention, is again relied upon as the witness to make out this charge. Barnes testified (Stenographic Record, page 909): "Somewhat about the last of 1901, as well as I can recall, I went to Judge Speer's chamber to thank him for a little fee as custodian for a bankruptcy estate. But in thanking him I stated that I feared he had been too liberal,

whereupon he replied that people did not appreciate a man's working for them for nothing, and that I had better make the most of these things. I then thanked him again, and before I could leave the room he detained me, and slowly said, 'You thank me very beautifully for these things sometimes, but what is there in it for me?' I said (and the Committee will remember how the witness extended both arms), 'Oh, millions, Judge, millions.' "

Mr. Barnes, however, testifies that the Judge did not discontinue appointing him custodian in bankruptcy cases. Mr. Barnes did not testify that he or any other receiver or custodian or other person within his knowledge had ever given Judge Speer directly or indirectly any part of the compensation allowed; he, indeed, testified directly to the contrary. No evidence of that character was produced, and no such evidence can be pardoned.

Of course it is possible for this embittered and resentful man to attribute anything to the Judge who was obliged to ask his removal, especially if he locates the incident in the privacy of the Judge's chamber. In his examination in Savannah, one of his counsel, Mr. Callaway, propounded this question to Judge Speer (Stenographic Record, page 2524) :

"Mr. Callaway: Judge Speer, Mr. Barnes, who was formerly marshal of this district, testified that on one occasion you were paying him as receiver in some case, and that you said: 'What is there in it for me?' or, 'What do I get?' Do you recall making any such statement to Mr. Barnes at any time?"

Judge Speer: "I recall a statement which Mr. Barnes may have construed that way, but he is very widely in error. Mr. Barnes is somewhat of a literary man, and he ought to recall what I said. When he came in to me, and I gave him this fee, which he said was a large one, I narrated an instance in the life of Lord Chatham, the first Pitt, when he was appointed paymaster of the forces. Previously it had been the custom of the paymasters to keep a large sum, say, 500,000 pounds, deposited, and to collect interest on that

deposit and appropriate it to their own use. Pitt, when first appointed paymaster, discontinued that, and when some one commented on these large sume going through his hands and he getting no benefit from it, he held up his hands and said: 'None of it sticks.' Your Honors will find that in the life of Lord Chatham. That is what I said to Mr. Barnes, and is what his malevolent mind has construed to be an offer on my part to accept a bribe from him. You have heard what Mr. Akerman told you about Mr. Barnes, and his general character."

Judge Speer was perhaps incautious in mentioning to a man of Barnes' suspicious and ignoble nature this incident in the life of one of the greatest and most incorruptible of the English-speaking race.

Of the vast sums paid out under his orders and decrees in the thousands of estates he has managed in his long career, Barnes is the only witness who has ascribed to him the slightest imputation of personal aggrandizement. Even if the statement of Barnes were true, the remark attributed by him to Judge Speer cannot fairly be construed into evidence of a corrupt purpose. If, however, the Committee will look to the record of the Department of Justice, showing the reasons which obliged Judge Speer to demand his removal from office, Barnes' insults to the people of Valdosta, and elsewhere, copies of which, authenticated by Akerman, were placed before the Committee, his threats to assassinate the Judge, his going into court at Savannah with a large revolver buckled around him and conspicuously displayed, after furiously threatening to kill the Judge if he should from the bench rebuke him or his deputies for failure of duty (See the affidavits of George F. White, J. N. Talley, R. B. Middleton, Alexander Akerman and others), the criminal animus of the witness will be made plainly apparent.

In estimating the value to be accorded the testimony of this witness, the Committee, it is respectfully submitted, should not disregard the letter to Judge Speer, written by Mr. Alexander Akerman on August 26th, 1904. In this he

refers to Barnes as "that earthly Ambassador of his Satanic Majesty." Of Barnes' statement that he had seen three Senators who had agreed to help him in his attack on Judge Speer, Akerman writes:

"I am inclined to think that it is a piece of lying, pure and simple. Permit me to say that should he make any attack on you, and should you consider my professional services of any value, I will cheerfully resign my office in order to defend you."

In a letter of even date to the President, a copy of which Akerman enclosed to Judge Speer, he writes:

"Those of us who have such high admiration for the ability and character of Judge Speer, and who hope to see him at some opportune time promoted to a broader field of usefulness, do not feel that we would be doing Judge Speer, or ourselves, justice to permit any slanderous statements in regard to him to go unchallenged, especially so when we consider that Mr. Barnes, during his lucid intervals is such a plausible talker as to be able to convince any one who does not know him, of the truthfulness of his statements. I do not know what charges Mr. Barnes may have made to you against Judge Speer, and therefore am not in a position to refer to them, but I assure you that after a long acquaintance with Judge Speer, both as a member of the court and a member of the bar practicing before him, I have never observed anything in his public or private character that deserves anything but the highest commendation from all right-thinking and law-abiding citizens."

Akerman then refers the President to the affidavits of many Georgia citizens of the highest character in regard to the conduct of the late Marshal Barnes:

"a perusal of which would convince you that Mr. Barnes is either a very bad man, or that he is at times mentally unbalanced and utterly irresponsible for any statements he may make."

"This letter," he adds, "is written without the consent or knowledge of Judge Speer who is absent on his summer vacation."

These letters appear on pages 1145-6-7-8-9 of the stenographic record.

In reply to a question propounded by Mr. Howard, Mr. Akerman said:

"That is my hand-writing, yes, I wrote that. That is in 1904."

A casual perusal of the testimony of Barnes himself will bear out Akerman's estimate of his character. He was in fact the only witness during the entire investigation the Chairman felt called upon to attempt to confine to specific facts. On page 907 of the stenographic record the Chairman said:

"Mr. Barnes, will you now come down to specific facts a little more?"

On page 925:

"The Chairman: I hope you will confine yourself to the facts as much as possible. Leave out as many collateral matters as possible."

Had the Committee gone into his character, or had Judge Speer been permitted to prove it, it would have been shown to be distinctly homicidal; that he had actually killed a citizen of Chattanooga, Tenn., and had been tried for his life; that on the first trial he was convicted and obtaining a new trial was acquitted; that it was his custom, as the evidence before the Committee will show, to threaten the lives of those persons with whom he was displeased; that he had frequently threatened Judge Speer's life; that Judge Speer stated this to Attorney General Knox, and to President Theodore Roosevelt, and that Barnes was removed by an immediate telegraphic order; that he had threatened to kill everybody on the court room floor in Macon; had expressed the desire to get a half dozen or more lawyers of the Bainbridge bar together so that he could kill them all at one

time; that it was his custom to drive up to the court house in Macon, almost daily, with a variety of rifles and pistols in his buggy, and then betake himself to the country to perfect his aim and quickness in handling arms, useful only for the destruction of human life. That he has verbally, and by letter, invited various persons to cross the state lines so that he might appropriately and without violation of the Georgia law, exchange cartels as preliminary to duels.

Akerman testified (Stenographic Record, p. 1179) that Barnes threatened to shoot him and also gave him an invitation to the *duello* above mentioned. Barnes testified that Judge Speer had him walking a tight-rope for seven years; and had the whole Marshal's force pulling up and down the window-shades in the court-room; that Judge Speer took an active part in politics, when in fact he has taken not the slightest part in such matters since he has been on the bench; that he was an active manager to have Judson W. Lyons, a colored lawyer of Augusta, elected National Committeeman over Henry Blun, of Savannah, in 1908, when in fact Judge Speer never mentioned, or even thought of Lyons' candidacy. The last statement is so amazing and unfounded that Judge Speer begs to offer the Committee a letter voluntarily sent him by Judson W. Lyons, formerly Register of the Treasury, since Barnes' testimony was given:

1922 15th Street, Northwest,
Washington, D. C., January 26, 1914.

Hon. Emory Speer,
Savannah, Ga.

My Dear Sir: I have not seen it myself, but a friend tells me that he saw it published in the *Atlanta Constitution* that John M. Barnes, Esq., of Thomson, Ga., formerly United States Marshal, testified the other day before the Special Committee of impeachment, that you had been my campaign manager in 1908. This statement is so absurd and ridiculous that it is hardly worth while noticing, but as they seem to be endeavoring to magnify everything and distort everything that they can possibly put their hands on against you, it might be well for me to say that never a word has passed between you and me about active political

affairs in the State of Georgia since I have been an active participant in politics.

Very respectfully,
JUDSON W. LYONS.

Surely when the Committee has considered the appreciation of Barnes given in the letters of Akerman, and has looked to the intrinsical nature of his testimony, its swiftness and maliciousness, and oppose to it the life record of Judge Speer, it will be disregarded altogether.

USE OF DRUGS.

As to the causeless, cruel and humiliating charge that Judge Speer is addicted to the use of drugs, it will suffice to say, in the language of a great newspaper published at Tampa, in Florida: "It has miserably failed."

There is no proof whatever of the fact, and it has been refuted conclusively by two witnesses called by the Committee. Louis Pellew, the druggist of Judge Speer and his family (Stenographic Record, page 576), and Dr. Wm. J. Little, the only physician called, a near neighbor who had frequently attended Judge Speer during sickness and in periods of great suffering, indeed anguish. Stenographic Record, page 610.) This high-minded and great physician testifies on page 611: "Judge Speer's mental condition when he is well is superb." Page 612: "I have never seen his mind affected in the least." "Page 614: "I have never had any acts of Judge Speer to suggest the drug habit to me."

It may be added, also, that Dr. I. H. Goss, of Athens, who has attended Judge Speer at times for many years, and who was one of his physicians in his recent most severe illness, was in court. His presence was called to the attention of the Committee by Judge Speer's counsel, but he was not sworn. (Stenographic Record, page 590.)

Mr. John R. L. Smith based his opinion that Judge Speer's mental faculties were impaired upon the fact that some time

last year, the Judge offered to sell this witness a horse, but it does not appear that Judge Speer offered to sell the horse on time.

ALLEGED USE OF MESSENGERS, CRIERS, AND BAILIFFS AS SERVANTS OF THE JUDGE.

Here also the witnesses relied on to show the alleged misconduct are Alexander Akerman and John M. Barnes. Both of these witnesses testify that the messenger, and certain criers and bailiffs performed no services for the United States but acted as personal servants for the Judge.

If this charge is true, both of these men are guilty of malfeasance in office, and of presenting or certifying false accounts to the Government. The pay rolls of these officers are made out by the Marshal, and they are approved by the United States Attorney, or in the absence of the United States Attorney, by his Assistant. Barnes was Marshal for seven years after 1897. Akerman has been Assistant United States Attorney, in charge of the office, and United States Attorney, for about fourteen years. If these officials allowed the practice to go on to which they refer, and made up and approved the monthly and quarterly accounts of the marshal, they are both subject to indictment. Their evidence on this subject is the grossest misrepresentation, and would only be given by men having the character portrayed in the mutual opinions they express of each other. The testimony of the marshal, George F. White, and of Chief Deputy Henry G. Tucker, is that these officers performed all the services required of them, and that Judge Speer paid them for all personal services rendered him. The crier did not always open the court, though some criers did. It is the Georgia practice for the chief executive officer to open the court. In the State courts it is the sheriff, and in the United States courts, the Marshal. This distinction is usually desired by the Marshal. The crier is a statutory officer. Sec. 5, Judicial Code. The bailiffs are appointed by the Marshal. The messenger is allowed by the Attorney-

General. It is true that one of these officers usually made his home at Judge Speer's residence. But this did not interfere in any way with his duties to the Government. Mr. White, the Marshal, testified that they attended court and performed the duties required of them. Take Mel McCoy, as an illustration. He has lived with the Judge for most of the time for many years. He has been at times crier, and at times messenger, and at times a bailiff. He has performed many duties for the Government, notably in guarding one Cooley, an important prisoner transported from Savannah to Indianapolis under the charge of complicity in the destruction by dynamite of the building of the Los Angeles, California, Times. The residence of McCoy at Judge Speer's home promotes the business of the court. A great deal of judicial work is done there at chambers, interlocutory hearings are often had at the Judge's residence, which is a mile and a half from the Government building. A large part of his library is kept there for these purposes. It is often essential to use this officer to send for attorneys, books or papers. In addition to this, more than once Judge Speer has been threatened by the criminal classes with whom he has had to deal, and at least once by an insane person. The Marshal has been instructed by the Attorney-General to afford him the necessary protection. There could be found perhaps no better friend in need than this unpretending, but intelligent and courageous North Carolina mountaineer. This officer is entitled to a home somewhere, and if Judge Speer has thought proper to give him this and other advantages in consideration of his companionship and assistance, no one has the right to object. Nor is it discreditable to either party.

Judge Speer's relation to this officer appears, from his own testimony in the record, from page 2519 to 2521:

"Now, take the case of Mell McCoy. Mr. Akerman, in his statement to the Attorney-General, which has been furnished my counsel, stated that he was a good North Carolina man, but he could not learn to open court in five years. I don't think that was just to a North Carolinian; particularly

as I myself am lineally descended from a Governor of North Carolina. He is really, while a plain man, a very intelligent, courageous mountaineer.

"Mr. Callaway: Has Mell ever been a servant in your family?

"Judge Speer: In a sense, no. He is more of a friend and companion than a servant. Mell is a horse-trader by profession. The Latin adage, '*gaudet in equis et canibus*' applies; he delights in horses and dogs. We hunt together, we ride together. I have given him his riding suit, and his leggings. He rides a rather finer horse than I do, because he is a younger man and can control him better. When the night-fall comes, Mell comes into my study and we sit there together and read the newspapers, and sometimes I read him novels, to his great delight. I was reading one to Mell by Chas. Neville Buck of the Kentucky mountains and feudist wars, when I left home. I believe it was called 'The Battle Line,' or something of that sort, and I hope to finish it with him when this trial is over. He is my companion and friend. I have given him his clothing for years. When his wife was sick and he was unable to pay her expenses at the hospital, I paid them for him. When he was with me in Athens, during my sickness, I paid his board and have the receipt for it, \$40.00. When he got behind at the Reeves House, I paid that board for him, and have the receipt. I first got his boy admitted into the public schools. I have loaned him two or three hundred dollars at different times, and I never expect to ask him for the return of the loans."

He and his family were quite poor when Judge Speer first met them at Highlands, N. C., about thirteen years ago. His was a very hard life, and as the Judge has found him a faithful friend, it has given him great happiness to befriend him and aid his family. He is a valuable officer of the court.

The Committee doubtless understands that criers and bailiffs are paid a per diem only on the days when court is open for business. The messenger is paid by the month, as

I understand it, he is intended to aid the Judge in every practical way that a messenger can in the performance of his judicial duties.

GEORGE S. MURPHEY.

The witness testified (Stenographic Record, pp. 2120-2137) that he was sued in the United States Court at Augusta, Ga., by Springs & Co., Commission Brokers, of New York, on an account growing out of cotton future transactions which he had through plaintiffs while dealing in cotton futures on the New York Exchange. He did not dispute the correctness of the account, but defended on the ground that the consideration was a gambling transaction, and under the Georgia Statute was an illegal and immoral transaction. He complained first that his case was tried in the latter part of the summer before Judge Speer at Mount Airy, 270 or 300 miles from Augusta, at heavy expense to himself, and second, that the Judge decided the case and rendered judgment against him for the full amount sued for, about \$15,000, without permitting him to introduce any of his witnesses or testimony, and that on appeal from this decision to the Circuit Court of Appeals, Judge Speer was reversed, and subsequently, fearing to try the case again before Judge Speer, he agreed upon a compromise and a consent verdict in favor of plaintiffs for \$5,000 and costs which was taken before Judge Foster at Augusta, in October, 1913.

On cross-examination he practically admitted that the case was called for trial by a jury, by Judge Speer, at Augusta, at the April term, 1911, of the court, and was postponed at the instance of counsel for both parties, because neither side had completed the taking of their testimony in New York, and by consent of counsel the case was to be tried before the Judge without a jury at Macon during May, 1911, and the further postponement from Macon in May, because counsel had still not completed the taking

of testimony in New York. This second postponement, like the first, was at the instance of counsel, and not Judge Speer, and the trial at Mount Airy in the late summer was at the instance of counsel, and not the Judge. The Judge was entitled to his vacation, the court was not in session, and his consent to try the case at the time and place was an effort on the part of the Judge to oblige counsel, who, desiring a speedy trial of their case, should have been ready at the regular term in April at Augusta, or failing then, waited until the regular term in November.

From the case as reported in 200 Federal, 372, it appears that the Judge struck the plaintiff's plea and defense of a gambling or wagering contract on the ground that the defendant, in his answer admitted the allegations in plaintiff's petition of the rendering of a stated account showing the alleged indebtedness sued for and a promise on the part of the defendant to pay the same if given time. This having been done, there was nothing left for the court but to render judgment for the plaintiff under the agreed submission of counsel. The entire conduct of the case and the Judge's ruling is set forth in the report of the case in 200 Federal, 372. The ruling was reversed, but it was a clean, clear-cut decision, and at worst only reversible error. The subsequent events, as testified to by Mr. Murphey, does not support his charge that after the reversal of the Court of Appeals, he compromised on a \$5,000 verdict for fear of an unfair trial before Judge Speer. This compromise verdict was taken before Judge Foster in October, 1913, and Murphey testifies that he has neither paid the \$5,000 compromise judgment, nor does he know of any property of his on which it can be levied, or out of which it can be collected, and the debt, even though compromised, remains unpaid. His reasons for fear therefore seem unsubstantial.

THE CHARGE OF UNLAWFUL AND OPPRESSIVE CONDUCT IN DEFYING THE MANDATE OF THE CIRCUIT COURT OF APPEALS.

The only evidence on this subject is afforded by the testimony of A. A. Lawrence, and John Rourke, Jr., given at Savannah. This is that Judge Speer declined to make the mandate of the Circuit Court of Appeals in the case of J. B. Holst, *et al. vs.* Savannah Electric Company, the judgment of the Circuit Court. That case had been presented by a bill originally brought by J. B. Holst and seven others, citizens of Georgia. Later, Emma L. Carrington, a citizen of New York, intervened. It was to enjoin the defendant company from laying a track on a residence street in Savannah. Judge Speer originally entertained jurisdiction of the bill, not because of diversity of citizenship, but upon the theory that the case was one arising under the Constitution and laws of the United States. This appears from the following excerpt from his holding (131 Fed., p. 931) :

"The owners of property fronting on a street, may maintain a suit in equity in a Federal court against a city and a railroad company, both of which are corporations of a state, to enjoin the laying of tracks in a street under a void enactment by the city council purporting to be authorized by such act, where irreparable injury will result to their property, as a taking of property under color of authority from a state, without due process of law."

The Circuit Court of Appeals did not differ with Judge Speer upon the merits. This appears from the following extract from its opinion (132 Fed., p. 901) :

"If it be true, as alleged in the bill, that the Mayor and Aldermen have passed an ordinance which, under the laws of Georgia, they had no right to pass, and the ordinance is void, and that the Electric company is trespassing on the property of the complainants or interfering with their property rights under the

authority seemingly conferred by the void ordinance, these wrongs undoubtedly confer a right of action on the plaintiffs. But unless it appears from the averment of facts in the bill in such form as is required by good pleading that the suit is one which involves a controversy as to a right which depends on the construction of the Constitution or some law of the United States, the jurisdiction cannot be maintained on that ground."

That court also held that jurisdiction of the bill could not be maintained on the ground of diverse citizenship because it appeared that only one of the several plaintiffs was a non-resident. The Circuit Court of Appeals directed that the temporary injunction of the Circuit Court be dissolved and the decree of the Circuit Court be reversed, and that the cause be remanded.

The bill in question was addressed to the Circuit Court of the United States for the Fifth Circuit. The address of the mandate was the same. When the mandate was presented to the Judge, the Court was not only in vacation, but he was in the Northern and not the Southern District of Georgia. Opposing counsel were absent, and had no notice that the motion would be made. There was no consent that he should act at chambers outside of his district and make what would have been a final decree. This is made very plain by the testimony of Mr. John Rourke. He stated that when the mandate was received, early in November, he does not remember the date, he carried it to Judge Speer, who was then at his summer home at Mount Airy, in the Northern District of Georgia, and requested him to make it the judgment of the Circuit Court; that Judge Speer declined to grant the order requested, but dictated to him the following telegram to be sent to leading counsel, Osborne & Lawrence:

"The court in Savannah not being in session, Judge Speer does not feel at liberty to sign a judgment making the mandate of the Circuit Court of Appeals the judgment of the Circuit Court. Besides he wishes to hear counsel upon the question, has the

Circuit Court of Appeals jurisdiction to try an appeal involving the constitutional question in this case, and has not the Supreme Court of the United States exclusive jurisdiction? The court will convene at Savannah on the 28th instant. He would consider a signed consent to waive the question mentioned."

This telegram purports to be signed by John Rourke, but that gentleman testified that it was dictated by Judge Speer. (Stenographic Record, page 1472.)

It will be observed that Judge Speer offered to waive the question presented by this telegram on a signed consent of counsel. He doubtless had in mind section 5 of the Act of March 3, 1891 (26 Stats. L. p. 826). This provides for a direct appeal to the Supreme Court "in any case that involves the construction or application of the Constitution of the United States." As this bill charged that the property of the plaintiffs was being practically taken from them without due process of law, and that, too, by the City of Savannah and the Electric Company, both of which were agencies created by the State law, it seemed to involve the relating clause of the 14th Amendment. On both grounds, therefore, his hesitation to sign a decree, which would have been a finality, seems justifiable. If, however, he was in error, it was error only. It seems an ugly distortion of these facts, all of which appear from the record and the recited telegram, to charge Judge Speer with defying the mandate of the Circuit Court of Appeals.

The November term of the court in Savannah soon convened, and on November 28th, the first day of the term, the bill was dismissed. In the meantime, another bill on the same subject-matter had been filed by a non-resident against the same defendants. Judge Speer, as was obligatory on him, issued a rule *nisi* returnable two days later, namely, on November 30th, and granted a temporary restraining order operative in the meantime. The bill last mentioned was heard and dismissed early in December. Certain it is that the non-resident plaintiff was entitled to have a hearing. The right of action had been distinctly recognized by

the Circuit Court of Appeals. Although Judge Speer did not put his original ruling on that ground, that court commented on the fact that there was no diversity of citizenship, and made this one ground of its ruling. This was altered by the second bill. This was drawn and presented by eminent solicitors in equity, and surely the non-resident plaintiff was entitled to the brief opportunity of hearing accorded. Although the second bill was promptly dismissed, it seems that Judge Speer gave offense to the Electric Company, and Messrs. Osborne & Lawrence, because he accorded a hearing to a private citizen who challenged corporate power.

The assertion, if true, that on the hearing of the petition for injunction in the second case, that Judge Speer remarked to counsel that it was "a good case to settle," does not seem to be reprehensible, or even important.

JUDGMENT FOR STENOGRAPHER'S COST.

Gordon Saussy complained (Stenographic Record, p. 1569) that in April, 1908, on the trial of the case of the United States *vs.* Atkinson, a criminal case where Mr. Saussy represented the defendant, he made a contract with Mr. A. H. Coddington, the court stenographer, to transcribe certain testimony in the case for his use, agreeing to pay the customary charges. After the testimony had been transcribed a disagreement arose between him and Mr. Codington as to how much or what parts of the record had been ordered transcribed,—and not being able to settle the matter, Mr. Codington, the stenographer, filed a sworn petition against Mr. Saussy, as a practicing attorney and officer of court, to collect his charges as stenographer for writing out the record at Mr. Saussy's request. Upon this sworn petition the Judge granted only a *rule nisi*. In response to this rule Mr. Saussy appeared before the Court and after considerable argument and discussion by Mr. Codington and Mr. Saussy, the Judge rendered the written decision

(Stenographic Report, pp. 1576-7) wherein it is recited that it appeared

"That the defendant in the criminal indictment has paid to Gordon Saussy, Esquire, the sum of \$55 for the purpose of discharging the stenographer's costs for making a transcript of the evidence given on the first day of the trial."

Then, after stating the value of the services to be \$55, the order directs said Saussy to pay over the said sum of \$55 to Codington, the stenographer.

Mr. Saussy testifies that shortly afterwards, when notified by the Clerk of the order or judgment, he paid it. But now, more than five years after the judgment was rendered, placed on the minutes, and paid by him, he questions the accuracy of the recitals therein that at the time of the hearing his client, Atkinson, had paid over to him the sum of \$55 with which to discharge the stenographer's bill. It might be sufficient to say that the recitals in the order justify the judgment and that neither the correctness of the judgment nor the accuracy of the recitals therein can be collaterally attacked after payment and acquiescence therein for such a length of time. But even Mr. Saussy in his testimony before the Committee does not make it clear that the recital in the order was inaccurate. (See Stenographic Record, pp. 1577-8.)

"Mr. Callaway: Did you see this judgment afterwards when you paid it did you not?

"Mr. Saussy: Some time either the last part of April or the first of May, yes."

Again on page 1580 of the Stenographic Record in response to a question from the Chairman as to his contention as to the truth of the recitals in the order, he replies—

"Mr. Saussy: That judgment partially speaks the truth, but not all the truth. I saw that judgment this morning for the first time. I notice on the book here that it says they sent me a copy. Mr. Johnson just told me he had a \$61.50 order of Judge Speer's and for me to come up and pay it."

Mr. Saussy was equally as uncertain as to how much his client, Mr. Atkinson, had paid to him for the purpose of discharging this stenographer's bill. He thinks (Stenographic Record, p. 1581) that it was somewhere about \$30, but at the same time he admits that there was a difference between him and Atkinson, and that Atkinson had contended that he, Saussy, ought to pay a part of the stenographer's charges. At the bottom of page 1581, he says:

"I am quite certain that I stated this to Judge Speer, that in the event he made this rule absolute the money would be paid. I don't remember whether I said I would pay it, or my client would pay it, but that question came up, and I think I stated it in open court that day."

"The Chairman: Well, at the time this judgment was rendered and signed by Judge Speer, he says that it appeared to the Court that your client had paid you the \$55 for the purpose of being used in paying for the stenographer's transcript, is that correct or not?"

"Mr. Saussy: Well, it may be or it may not be, I did not give the Judge the evidence of it."

Complaint is made that summary proceeding by rule to collect the stenographer's cost in this instance was without the jurisdiction of the Court. This complaint seems to be sustained by the case of *S. A. L. Rwy. Co. vs. Memory*, 126 Georgia 183, so far as the Georgia State practice is concerned and the only contrary authority so far found appears in the 26th Am. & Eng. Enc. of Law, (2 Ed.) page 779, where the text is as follows:

"It has been held that if an attorney wrongfully refuses to pay the legal charges of a court stenographer, the court may protect the latter by a summary order against the attorney," citing
Wright vs. Nordand, 58 How Pr. 184.

Certainly if this can ever be done, it would be proper where it appeared to the Court that the attorney had al-

ready received the money from the client and was refusing to pay it over to the stenographer.

It further appears from Mr. Saussy's testimony that his main contention was as to the amount of the record for which he should be required to pay the stenographer, rather than a question of jurisdiction, or the form of procedure, and he distinctly stated to the Judge that if he ordered the money paid under the rule it would be paid, and he is only uncertain as to whether he said it would be paid by himself or his client. This is hardly the language to be used by a party contesting vigorously the jurisdiction of the matter in hand before a court.

In conclusion it is respectfully submitted that if any error was committed as to the form of procedure, or in the jurisdiction of the subject mater, substantial justice was done, no harm resulted, and the matter could have been corrected on appeal or review.

THE CENTRAL RAILROAD CASE.

The Order of March 3, 1892, appointing a Temporary Receiver for the assets of the Central Railroad & Banking Company of Georgia.

In his testimony before the Committee, Mr. A. R. Lawton, of the firm of Lawton & Cunningham, attorneys, of Savannah, Georgia, has adversely criticised the action of Judge Speer in passing the order of March 3, 1892, appointing his uncle, General E. P. Alexander, then President of the Central Railroad & Banking Company of Georgia, temporary receiver of the assets of that Company. This was done on the bill of Rowena M. Clarke, of Charleston, S. C., a stockholder of the Central Railroad & Banking Company of Georgia, filed in behalf of herself and other stockholders, against the Central Railroad & Banking Company of Georgia, the Georgia Pacific Railway Company, the Richmond & Danville Railroad Company, and the Richmond & West Point Terminal Railway & Warehouse Company, and others.

From the averments of the bill, among other things, it appeared that the Richmond & West Point Terminal Railway & Warehouse Company, which will be referred to as the Terminal Company, was a stockholder's holding company, which directly and indirectly through stock ownership, had acquired practically the entire stock ownership and control of the East Tennessee, Virginia & Georgia Railway Company, of the Richmond & Danville, and a majority control of the stock of the Central Railroad & Banking Company of Georgia, and through that company all the roads and subsidiary lines of the latter. The three great systems of railroad were practically parallel and competing lines. The two principal trunk lines of the two systems cut each other at Chattanooga, Rome, Atlanta, and Macon, and had their coast terminals at the adjacent ports of Savannah and Brunswick. Through the control of the Richmond & Danville system, including the Georgia Pacific Railroad property, by the Richmond & Danville, from Atlanta to Birmingham, Ala., also, through its control of the lines of the Central Railroad & Banking Company of Georgia, connecting the Atlanta system with Birmingham, the Terminal Company had acquired competitive lines radiating into Georgia from the great coal and iron fields of the Alabama section.

This acquisition of the stock control of the Central Railroad & Banking Company of Georgia was in the teeth of the following provision of the Constitution of 1877 of the State of Georgia:

Article 4, paragraph 4 (Sec. 6466 of the Code of 1910) :

"The General Assembly of this State shall have no power to authorize any corporation to buy shares of stock in any other corporation in this State or elsewhere, or to make any contract or agreement whatever, with any such corporation, which may have the effect, or be intended to have the effect to defeat or lessen competition in their respective businesses, or to encourage monopoly; and all such contracts and agreements shall be illegal and void."

It was also in violation of the following provision of the Code of Georgia, in Section 4253, Code of 1910:

"A contract which is against the policy of the law cannot be enforced; such are contracts tending to corrupt legislation or the judiciary, contracts in general in restraint of trade, etc."

These provisions were both of force when the bill was filed. The acquisition of the controlling stock of three competitive interstate commerce lines was also in defiance of the recently enacted Sherman Anti-Trust Law of 1890.

See opinion of Judge Speer, *Clarke vs. Central Railroad*, 1 Anti-Trust Decisions, p. 17.

This was the second case reported and published by the Attorney-General in that valuable compilation.

On December 19, 1888, the Georgia Pacific Railway Company had leased its railroad lines to the Richmond & Danville Railroad Company. This creature of the Terminal Company went into the operation of the leased road, and the Georgia Pacific existed thereafter as a shell organization only. Its solvency depended entirely upon its lease to the Richmond & Danville Company. Its paucity of assets made it wholly irresponsible. For this "sham" lessee to undertake the great obligation of the lease of the Central Railroad & Banking Company of Georgia, with its vast properties, as hereinafter mentioned, seems impossible now when the reign of the railroad wrecker has ended. Shortly, thereafter, however, through its majority stock control, the Terminal Company elected a board of directors of the Central Railroad & Banking Company of Georgia, and made E. P. Alexander, the uncle of the witness, president of the latter company. On June 1, 1890, this board of directors, thus placed in power and in control of the affairs of the Central Railroad & Banking Company of Georgia, executed a lease whereby all its railroads and steamship lines were leased directly to the Georgia Pacific Railway Company, or its control transferred to the latter through the stock con-

trol of the subsidiary lines of the Central. The lease was secured by a guaranty bond given by the Terminal Company for one million dollars. The properties ostensibly transferred by this lease to the sham corporation aggregated over twenty millions of dollars.

Now the charter of the Central Railroad & Banking Company of Georgia gave it no power to lease its lines to other companies. It had no such power without express authorization under the laws of Georgia, and the general law applicable to such cases. The act was *ultra vires*. At the time of the lease the Georgia Pacific Railroad Company was not even operating its own road. Besides no resolution of the Board of Directors of the Georgia Pacific Railroad Company had ever been passed authorizing it to accept the lease of the Central. It never for one moment went into operation of the railroad lines of the Central. These were all coolly turned over to the Richmond & Danville. There was never any writing or contract, or even a "scratch of a pen," by which the lease of the great Central railroad properties to the Georgia Pacific Railway Company were transferred to the Richmond & Danville Railroad Company. There was an equal absence of any contract or agreement by which the Richmond & Danville Railway Company assumed in any way any liability for the performance of the terms of the lease to the Georgia Pacific, or for the operation of the Central railroad lines. As early as February 19, 1892, the Hon. A. O. Bacon, a stockholder of the Central Railroad, had addressed a letter to General E. P. Alexander, President of the Central, asking to be furnished with a copy of the supposed contract under which the Richmond & Danville was then operating the Central Railroad and its properties, if any. To this letter, Gen. E. P. Alexander had written the following reply:

"New York Hotel, New York, February 22nd, 1892.

Dear Sir: Your letter of the 19th forwarded has just reached me. I know nothing of the contract to which you refer and am therefore unable to give you any information

on the subject. I can only suggest that you apply to the parties themselves.

Very respectfully,

E. P. ALEXANDER, President.

A. O. BACON, Esq."

This appears from the record of the case.

In the meantime, with no pretense of legal authority, as stated, the Richmond & Danville took possession of all the railroad lines and steamship lines of the Central Railroad & Banking Company of Georgia. It placed its own officers in control. It painted out the name of the Central Railroad of Georgia on the passenger cars and locomotives of the latter company. It was proceeding to demolish and transfer elsewhere the shops of the Central at Savannah. It did not indeed claim any authority to go in possession and operate the properties of the Central other than the general claim that it had been "requested" so to do by the Georgia Pacific.

In the meantime, after June 1, 1890, the Richmond & Danville Railroad Company, through its officers, were creating an enormous floating debt for operating expenses of the Central Railroad. They were appropriating all its revenues. This was a most alarming danger. Under the rule which had been established by the Supreme Court in the case of Fosdick *vs.* Schall (88 U. S., 235), all these operating expenses were a charge and first lien on the incomes and probably other assets of the Central, and were specifically held to be such subsequently, not only in this case Clark *vs.* Central Railroad, 30 U. S. App., 263-66 Fed., 806), but in many other cases. See Rose Notes on U. S. Reports, 9th vol., page 712.

In the meantime, the first semi-annual dividend on the stock of the Central, after the so-called lease to the Georgia Pacific Company, accrued on January 1, 1892. On that date, also the Central had in addition to the fictitiously guaranteed dividend, large accruing obligations to meet. The Richmond & Danville, presumably the lessee and actually in possession, was presumably liable. The Georgia Pacific, the nominal lessee had nothing to pay with. Then this astonishing proposition followed. The Richmond & Danville

offered to pay what it owed as an "advance" if the Central would put in its hands shares of stock the latter owned in the New England & Savannah Steamship Company, to the estimated value of a million dollars.

General E. P. Alexander had been a gallant chief of artillery under General Lee. He was an honorable man, but in the hands of the Wall Street operators, who were swiftly wrecking these vast properties, he was helpless. He, however, endeavored to conserve his trust. On December 29, 1891, as President of the Central, he filed a solemn "protest" against the illegal and unwarranted course of the Richmond & Danville. But the wreckers were as determined as they were daring. Finally to prevent default on the obligations of the Central, its President consented to place these valuable securities in escrow in New York, to bring about as an "advance" the payment of nine hundred thousand dollars, every dollar of which in equity and good conscience the Richmond & Danville justly owed. By thus parting with perhaps the most available asset of his company, the President kept up appearances, and for a short time averted its default.

In the meantime, a committee had been appointed by the General Assembly of Georgia to investigate the legality of the Central's lease, and the operation of its lines by the Terminal Company, and its creature, the Richmond & Danville. This made the described conditions public. On March 2, 1892, a minority stockholder demanded that the lease to the Georgia Pacific be cancelled. The President replied:

"Yours of this date at hand. This Company respectfully declines to attempt to cancel the lease of its properties to the Georgia Pacific Railway Company, believing said lease to be to the interest of all the stockholders."

(Rowena Clark Record, p. 50.)

A large amount of testimony, oral and documentary, was taken before the Legislative Committee. Among a number of witnesses, General Alexander and Pat Calhoun were ex-

amined under oath. Their testimony developed the essential facts here stated. This testimony was printed, and a copy of it and the Report of the Committee was before Judge Speer at the time the bill of Rowena M. Clark was presented. The conclusion of that report of the Georgia Legislature is as follows:

"The Committee finds the following lease is not authorized by the charter of the Central Railroad, to-wit; the lease of the Central Railroad to the Georgia Pacific.

The Committee finds the following leases are contrary to the competition clause of the Constitution:

That of the Central by the Georgia Pacific, and that of the Macon & Northern (a road extending from Macon to Athens) by the Central and the Richmond and Danville."

Rowena Clark Record, p. 361.

There was also at this time the gravest apprehension that the State, through its legal department, would take action which would result in the immediate bankruptcy of the Central.

But this was not all. Several of the directors of the Central had resigned from the Board. This resignation was made as a protest for the action of General Alexander in placing a million dollars' worth of the Steamship stock with the Terminal Company to obtain the so-called "advance" made by the Richmond & Danville. It must be borne in mind that the Terminal Company not only dominated the Central, which was held in possession and whose assets were being thus diverted, but also the Richmond & Danville, which held and controlled it.

The correspondence of General Alexander in evidence in the Rowena Clark case shows that he could only protest and do no more.

The foregoing facts, developed in the testimony before the Investigating Committee and made public by the report, were declared by General Alexander himself to be as notorious as the Civil War.

These facts, in their essence, were embodied in the bill presented to Judge Speer on March 3, 1892. He gave them the gravest and most careful consideration. An entire day was taken for consideration. The basic constitutional principles involved were not unfamiliar to him. They had been reviewed and considered first in the case of *Langdon vs. Branch*, 37 Fed., p. 449; and again in the case of *Hamilton vs. S. F. & W. R. R.*, 49 Fed., p. 412. These, with the relevant averments and facts, were now carefully weighed. His conclusion was finally reached and announced. 50 Fed., p. 338.

These three cases, decided by Judge Speer, were cited by the Supreme Court of the United States in the case of *Louisville & Nashville vs. Kentucky*, 161 U. S., 703-4, a case in which similar principles were invoked.

The receiver was appointed. The order of appointment was maturely considered and carefully drawn. To its guarded character the attention of the Committee is respectfully asked:

“In the meantime, E. P. Alexander is appointed a Temporary Receiver of this Court of all the property and assets of the said The Central Railroad & Banking Company of Georgia; it is ordered, however, that the ordinary business of said Central Railroad & Banking Company and its connections, shall be continued and conducted as usual, and until further order, without change of books or accounts.

It is moreover ordered, that the said Temporary Receiver shall take care that none of the assets of said Central Railroad & Banking Company shall be converted to the use of the defendants, the lessees as aforesaid of the property of said Central Railroad and Banking Company of Georgia, or otherwise misapplied, and to preserve the legal status of the property of the said Central Railroad & Banking Company, in accordance with this order, until the hearing. In the meantime, the said defendants are enjoined and restrained from disposing of the properties, assets, rights or franchises of said Central Railroad & Banking Company, or from creating any encumbrance upon the same until the further order of the Court.”

Now the trained and practiced lawyers of the Committee will at once observe that this was an order of conservation. Here was no disruption of the ordinary business of the Central Railroad & Banking Company and its connections. These were ordered to be continued, and conducted as usual. The President of the road was appointed the receiver. What was he directed to take? "All the property and assets of the said the Central Railroad & Banking Company of Georgia." Of course in this preliminary stage the court could not determine what were those assets. Alexander was not directed to take the properties away from the Richmond & Danville. If that Company had an actual valid lease, which entitled them to control the Central properties, the lease was the asset, and not the properties. Alexander had been trusted by the Terminal Company. The Court also trusted him. No matter where the legal title to the possession of the property was, Alexander was given no right or power to disturb it. True, the Court knew that there were millions of dollars' worth of negotiable securities belonging to the Central which seemed in jeopardy. The incomes of the Central, as we have seen, were surely in jeopardy, and the Court did order that the Temporary Receiver should take care of the assets, and should see that they were not converted to the use of the defendants, or otherwise misapplied. He was ordered to preserve the legal status of the property until the hearing, and the defendants were enjoined and restrained from disposing of the properties, assets, rights or franchises, or from creating any encumbrance upon the Central Railroad and Banking Company until the further order of the court. Never, it is submitted, in equity was an order more justified by the facts. Already apprised of the misappropriation of a million dollars of assets, and their transfer to a distant state, the court well knew that a mere *rule nisi*, constituting *lis pendens* in Georgia, would not elsewhere protect the Central from the transfer of its negotiable assets to *bona fide* purchasers without notice, and the conservation order granted, it is submitted, was in the discretion of the Chancellor, and that discretion was not abused.

Mr. Lawton complains that the bill did not aver insolvency of the Central Railroad & Banking Company of Georgia. This was wholly unessential. It did aver that the company to which the Central had surrendered its franchises, by a lease which a committee of the General Assembly had declared unlawful, was utterly insolvent. It did aver the financial embarrassment of the Richmond & Danville, and the Terminal Company. The material insolvency was of those whose action was threatening destruction to the Central, however solvent it might be. Those corporations, by their operation of its properties, *ultra vires* its charter, were piling up an immense amount of debt, and they were diverting its assets. In short, they were swiftly and surely wrecking that noble property. The bill was filed, the prayers were framed, and the order was intended to prevent the looting of the property. It enjoined the illegal voting of the holding company, which had obtained a bare majority of its stock and was "freezing out" the minority stockholders, and that illegal corporate management which would enable the far-sighted operators behind the scheme to absorb for themselves the values rightly belonging to others. If the non-resident plaintiff had averred that her corporation was insolvent, she would have shown that she had no real interest to be preserved, and would have put herself out of court.

True enough, Mr. Justice Jackson, at a much later date, in passing upon certain collateral features of the case, expressed the view that the Central Railroad "had been wrecked in 1891," and was insolvent at the time the Rowena Clarke bill was filed. He pronounced it a mere "shell." However that may be, these facts had not been fully developed, and the bill as presented to Judge Speer was to protect the large values involved, from those who had no legal interest, and to prevent, if possible, the impending ruin. The bill as filed complied with the provisions of Equity Rule 94 in regard to stockholders' bills of the kind, and the relating decisions of the Supreme Court.

Mr. Lawton complains that there was no allegation of irreparable injury. This, too, was unimportant, but such averment is contained in the 19th paragraph of the bill.

The equity of the bill depends upon the broader grounds already stated. The criticism that the bill itself did not pray the appointment of a temporary receiver seems idle. The prayer for the appointment of a receiver is distinct, and it is for the court to determine in its discretion, that the appointment shall be temporary. Besides there is a prayer for general relief.

The receiver, as we have seen, was appointed on the 3rd of March, 1892, and with results the most amazing. The Richmond & Danville had been in operation of all the vast properties of the Central. The Georgia Pacific, the ostensible lessee of the Central's properties, by its answer, filed March 24th, now denied that it had been at any time in possession of any property of the Central; denied that it had the means of knowing, and declared that it did not know what property of the Central had ever been in the possession of the Richmond & Danville under the alleged contract of lease. It admitted, however, that it had "requested" the Richmond & Danville to assume control and management of the Central's properties.

The action of the Richmond & Danville was quite as amazing. Although it had long been in actual control of these great properties, collecting its incomes, appropriating its assets, and vastly increasing its debts, by formal letter from its counsel, Judge Speer was notified that the property had been formally surrendered to General Alexander, not only as receiver but as president, and had formally abandoned its claim to have the property restored to it by the decree in the case. These facts appear on pages 57 and 59 of the Rowena Clarke record.

On page 62 there is an answer filed by the Central Railroad & Banking Company of Georgia. While it avers that the lease to the insolvent Georgia Pacific was decidedly to the interest of all stockholders of the company, minority as well as majority, it further avers that since the commencement of this case, both by answer filed among the records of this court, and by private notification, the Georgia Pacific Railway Company has asserted the invalidity of the

lease, and announced, unconditionally, its surrender of the same, not only to the receiver but to this defendant, and its intention to abandon the same permanently; and the Richmond & Danville Railroad Company, the operating agent of the Georgia Pacific Railway Company, has announced its permanent abandonment of the same also.

This was sworn to by E. P. Alexander, President, on the 28th of March. It concludes with this statement:

"And this defendant submits itself to the jurisdiction of the court, as to the course it shall pursue in reference to the said contract of lease, and prays its direction and instruction in the premises."

This answer is signed by Lawton & Cunningham, Solicitors for the Central.

The next order will make plain to the Committee how unsound was the conclusion just expressed over the signature of the witness' firm, that the lease to the Georgia Pacific was to the interest of the stockholders of the Central. This may be found on page 63 of the Rowena Clarke record. It recites:

"Whereas, it appears to the court that there is due to the employees and laborers engaged in operating the Central Railroad and its properties for the month of February, 1892, the sum of about \$190,000," etc.

Then follows the first administrative order, granted to pay the wages of labor on the entire system, due and unpaid twenty-eight days.

Having abandoned its franchises and duties to the public for which it had been chartered by the State, having surrendered its railway lines to a fictitious lessee, who denied receiving them, having permitted a competing line to take them over without a syllable of authority, having without consideration permitted the diversion of more than a million dollars of liquid assets, having deprived the laborers and employees, even to the humblest track hands, of the wages upon which they depended for their daily bread, in the amount of nearly two hundred thousand dollars, Mr.

Lawton, the legal adviser of the company in this unlawful corporate management, comes into court, submits to the jurisdiction, and asks direction. In addition to this he condones the receiver's appointment by becoming his counsel. As Henry Crawford said of him: "He sticks by the *res.*" He was finally paid a great sum, Judge Speer was never informed how much, for his services in that vast litigation which resulted in the reorganization of the properties, and their final restoration to efficiency and solvency. He is high in office in the reorganized and rehabilitated road, and twenty-two years later comes forward to condemn the Judge whose orders and decrees saved all that was saved, and made the restoration possible.

The hearing upon the *rule nisi* was delayed for a few days only. Judge Speer had urged Circuit Judge Pardee to come to Macon and preside in the weighty trial. This Judge Pardee did, and while Judge Speer sat with him, the opinion of the Circuit Judge controlled.

It will be observed that as to the unlawfulness of the lease to the Georgia Pacific, and the unlawfulness of the possession and control of the Central properties by the Richmond & Danville, alleged in the Rowena Clarke bill, it stood absolutely confessed. Never at any time were any pleadings filed putting in issue the averments of the bill in those respects. To conserve the properties and to rescue for the Central its more than a million dollars' worth of assets which had already been diverted, the equity of the bill was not in dispute.

In these respects no other similar proceeding has been more effective or produced greater results for the salvation of the properties from the daring operators who had them in charge.

The other great legal question in the case was the right of the Richmond Terminal Company, owning competing lines, to vote the majority stock of the Central. By that control great wrongs had been accomplished. These were confessed by the prompt abandonment and throwing back upon Alexander, receiver and president, all the properties de-

scribed, as soon as the right of the Richmond & Danville to the possession was challenged. The hearing before Judges Pardee and Speer was most thorough. They both concurred. The Terminal Company was enjoined from the exercise of its voting trust. This was held to be in violation of the Constitution and laws of the State of Georgia before quoted

In the meantime, by voluntary resignation and re-election, the Board of directors of the Central was changed. General Alexander, president, and certain directors resigned, and other directors were elected. H. M. Comer, one of the strongest and most upright of Georgia's citizens, was elected president. Judges Pardee and Speer, to continue the policy of making as little change as possible, appointed the new board receivers of the lines of railroad which the Richmond & Danville had abandoned, and directed them to operate its properties. A stockholders' meeting for the election of a new board of directors was ordered for May 16th, at which the voting trust of the Terminal Company was enjoined, unless the stock it held should be transferred to other hands, and the court should be shown that the vote would be legal. It was contemplated by that order that the new board of directors should resume the operations of the properties, and the receivership should be terminated. This order was passed on March 28, 1892. But the duty of the court did not end here. It must regain the converted assets of the Central. A proceeding was filed by the Solicitors of the Complainants to accomplish this end. These solicitors were J. L. Perry, Daniel W. Rountree, Marion Erwin and A. O. Bacon. Their petition alleged that the depot building at Macon had been burned, and that the insurance money collected, amounting to thirty thousand dollars, was held by the Richmond & Danville, who refused to turn over the same. It also alleged that the receiver was entitled to recover the stock of the New England & Savannah Steamship Company, held by the Central Trust Company of New York, and which, as already stated, was placed in "escrow" to induce the alleged lessees to pay the semi-annual dividend, and other obligations.

This was not the only proceeding to recover this great asset. Another was filed by H. M. Comer, Chairman, of the Board of Receivers. It alleged that the Richmond & Danville Company has not the slightest claim, or shadow of right to said stock, that there never had been the slightest foundation for their claim to hold it, that the Central owed the Danville nothing, and that in fact the Danville, when it assumed possession under the lease, received from the Central in cash and materials an amount quite equal to \$844,000. This petition continues:

“Inasmuch, therefore, as the claim on account of which only, was this stock deposited or impounded is palpably unfounded, unjust and unconscionable, your petitioner respectfully submits to the court that the receivers are now entitled to the possession of said stock”

and prays for an order that it be delivered to him at once. (Rowena Clarke Record, pp. 82-84.)

That petition is signed by Lawton & Cunningham, which firm included the witness under consideration; and Denmark, Adams & Adams, and this included another witness who has testified in this case.

It will be interesting for the Committee to consider the methods by which the wrongdoers sought to retain these values. They are set forth in full in the order of the court directing restoration. This extends from the bottom of page 91 to page 107, inclusive, of the Rowena Clarke Record.

The efforts of General Alexander to secure the payment of the dividends due the stockholders of the Central, his telegraphic correspondence with General Samuel Thomas, director of the Danville Company, Pat Calhoun, etc., are indeed pathetic. To the latter gentleman he wires (page 99, Rowena Clarke Record) :

“Pat Calhoun, 80 Broadway, New York City.

I call on you and the other New York directors to protest against non-payment of our drafts, as default on lease. It provides arbitration differences.

I am willing to put securities in escrow. Board meets to-morrow.

E. P. ALEXANDER, President."

Calhoun replied (page 100) :

"Swann informs me Thomas directly repudiates statement that he agreed for you to put stock in Central Trust Company, and now declines to let Richmond & Danville pay any money unless this stock is given as absolute security. It is very important that you should come here by first train."

But at last these operators got the stock on the demand which the witness, Mr. Lawton, has testified was absolutely unconscionable and unfounded, and Judge Speer, through the powers exercised under the bill which Lawton now condemns, compelled its restoration, along with many other assets, liquid and otherwise, of which these lawless operators had obtained control.

It was stated by Mr. Lawton in his testimony that Mr. Justice Jackson dismissed the bill for want of equity. In this the witness seems gravely inaccurate. The order made by Mr. Justice Jackson appears at page 314 of the Rowena Clarke Record.

"Come now the parties by their respective solicitors and this cause came on for final hearing upon the pleadings, testimony and exhibits, and was argued by counsel, upon consideration whereof it is finally ordered, adjudged and decreed, that *except as to the averments of the bill concerning the inva'idity of the lease dated June 1, 1891, from the Central Railroad & Banking Company of Georgia to the Georgia Pacific Railway Company*, all rights under which were disclaimed by the answers of the Georgia Pacific Railway Company, and the Richmond & Danville Railroad Company, filed herein March 24th, 1892, the said bill of complaint be and the same is hereby dismissed for want of equity; and the injunction herein granted on March 28, 1892, restraining and prohibiting the exercise of any voting power on the forty-two thousand two hundred shares of

stock in the Central Railroad & Banking Company of Georgia, set out in the bill, is hereby rescinded and vacated."

Before this date the properties had been recovered. It will be observed that the only part of the bill of Rowena M. Clarke which was dismissed was that part of which prayed an injunction against the voting of the majority stock of the Central Railroad & Banking Company of Georgia by the Richmond Terminal Company as being in violation of the competition laws of the State of Georgia. The equity of the bill by virtue of which the millions of values of the Central were recovered from a lawless and predatory control, was wholly undisturbed. It would be astounding if it had been otherwise.

It was, then, not held by the Associate Justice that the court did not have jurisdiction of the case, or that the recovery of assets in the possession of the Richmond & Danville, which had been recovered on March 28th, was not a proper recovery and proper relief, and Mr. Lawton, who, as we have seen, so strenuously advocated the recovery of these assets under the Rowena Clarke bill, is now plainly mistaken.

The opinion of Mr. Justice Jackson was not printed in the Federal Reporter, but his reasoning appears at page 487, *et seq.*, of the Rowena Clarke Record. Judge Speer ventured to dissent. Rowena Clarke Record, p. 482, *et seq.*

At the time Mr. Justice Jackson rendered this opinion, the great cases which have since been decided by the Supreme Court of the United States, annulling the control by holding companies of stock in two parallel and competing lines, had not been decided.

The gist of that opinion is that the States have not the constitutional power to prevent a holding company from controlling stock ownership of two parallel lines operated within the State, and chartered by the State.

Two years later in the case of Louisville & Nashville Railroad Company *vs.* Kentucky, 161 U. S., 677, the precise

question was presented anew. It was then decided in favor of the State by the Supreme Court of the United States:

“The purchase of such stock in a rival and competing line is held to be contrary to public policy and void.”

Citing:

Central Railroad vs. Collins, 40 Ga., 582;
Hazlehurst vs. Savannah, etc., 43 Ga., 13;
Elkins vs. Camden & Atlantic, 36 N. J. Eq. 5.

They also refer in this case at page 704 to the decision of Judge Speer in *Clarke vs. Central Railroad*, 50 Fed., 338, and cite two other cases in which he had previously recognized a principle now so strongly imbedded both in our jurisprudence and legislation that it is no longer questioned. These cases are *Langdon vs. Branch*, 37 Fed., 491; and *Hamilton vs. Savannah*, etc., 49 Fed., 421.

The leading and conclusive case on this topic is doubtless *Northern Securities Co. vs. United States*, 193 U. S., 197. Although the doctrine has been since reiterated by the “final arbiter.”

The trustee for the mortgage underlying the principal bonded indebtedness of the Central, had now filed its bill of foreclosure. This was the Farmers Loan & Trust Company of New York. It held what was known as the “Tripartite Mortgage.” The Central had years before leased the Southwestern Railroad. That magnificent property extended through the fine agricultural territory stretching from Macon, in the center of the State, to Eufaula, in Alabama, with branches to Albany and other points. No property had been more favored by investors. The obligations of no other were regarded as better security. Its stock shares had been surpassed by no other similarly situated in market value. Justice Jackson, after full argument, sustained the contention of Mr. Lawton, and his associate counsel, that this property was liable to the payment of the tripartite bonds. He overruled the exhaustive briefs and arguments of Mr. A. O. Bacon and Mr. F. H. Miller, who maintained the contrary. Judge Speer again dissented. But naturally

the opinion of the Associate Justice was held entitled to greater weight. Shares in the Southwestern dropped from above par to \$30. The question was carried to the Circuit Court of Appeals, and by that court it was certified to the Supreme Court of the United States, and there it was settled by the security holders on the basis of Judge Speer's dissent. The Southwestern was relieved from the effect of the decree of the Associate Justice. Since then its stock has been above par, and has been sold at \$120.

The contention of Mr. Lawton that prior to the receivership under the Clarke bill, the Central stock sold for \$110 per share, and when the litigation ended it sold for \$4.50, is quite unfair in the inference he seeks against Judge Speer. He omits to state that up to that time, by one expedient and another, the semi-annual dividends had been regularly paid. He ignores the fact that the public was unaware of the lawless character of the Richmond & Danville control, and the worthlessness of the Georgia Pacific lease. He ignores the statement of the Associate Justice that the Central was "wrecked in 1891," a year before the Rowena Clarke bill was filed. He disregards the fact that the public was unaware of the tremendous significance of the demand by the Terminal Company that the Central should part with its most valuable available asset, the New England & Savannah Steamship stock, before the Wall Street operators who controlled the three competing lines, would put up the money to pay the dividends they primarily owed. He ignored what he himself alleged in the bill filed by the Central asking the appointment of a receiver to conserve what remained, namely, that under the Richmond & Danville control twenty millions of indebtedness had been fastened upon the Central properties. These facts, and many others scarcely less significant, are fully set forth over his signature in the cross bill of the Central Railroad & Banking Company of Georgia, extending from page 192 to 212 of the Rowena Clarke Record. This bill is also signed by Denmark, Adams & Adams, a distinguished firm which included the Hon. S. B. Adams.

The facts recited are reiterated in the original bill filed by the Central, extending from pages 217 to 232 of the same Record. To be precise, on page 228 there appears this averment:

"In January, 1890, the Central Railroad Company was entirely free from any floating indebtedness, and was otherwise in a most prosperous condition, whereas, at this time, its floating indebtedness exceeds five and one-quarter millions of dollars. Since January 1, 1887, there has been an increase of over \$20,000,000 in the obligations of this Company without corresponding increase in productive property. In consequence of this large augmentation of its indebtedness, of the Danville Company's exhaustive drain upon its resources and large indebtedness to it, of the diversion of its traffic, of the impairment of its credit consequent upon this association, and for other reasons connected with the Terminal & Danville management, the Central R. R. Co. is now in an embarrassed financial condition, and was compelled on July 1st to default upon the semi-annual payments of interests on the tripartite bonds, and certificates of indebtedness hereinbefore described."

In view of these recitals, to which counsel so eminent have appended their professional signatures, it is well-nigh affrontive to the Committee for Mr. Lawton to testify now, that the depreciation in Central Railroad stock was due to the action of Judge Speer on the bill which recovered its property from the hands of those, who as he recites, had ruined it and who in contemplation of equity must be regarded as wrongdoers and trespassers.

The two learned counsel mentioned, who have signed this bill, and who testified to the want of judicial attributes on the part of Judge Speer, have not, as we have elsewhere seen, always entertained that opinion so distressing to him. Indeed, in 1892, they regarded his judicial decisions as so valuable that they printed many of them in a special pamphlet. A copy of this has been placed in the hands of the Committee. It concludes with this temperate but dis-

tinct eulogium, to which for its evidential value he begs to invite the attention of the Committee:

"It is not the purpose of this publication to defend the distinguished judge who presides over the Federal courts for the Southern District of Georgia. This is unnecessary and it would be improper. His decisions are herein set forth, and they speak for themselves. In each case the law gave to any one who felt aggrieved, the right of appeal. It is but just to say that on several occasions, during the progress of this litigation, Judge Speer has from the bench given earnest expression to his desire, that in view of the great interests involved, an amicable adjustment of these issues might be reached. Upon two, or possibly upon three different occasions, upon his own motion, he arrested the argument as to the New England & Savannah Steamship Company stock and ordered a recess, urging upon counsel to confer together and to come to an agreement, if possible, that would prevent further litigation, not only as to that matter, but as to all matters of difference between the two companies.

During the recent argument upon the Central's application for a receiver for the Danville, he stated from the bench, that if the Central established by proof and by authority its right to the appointment of a receiver, he still would give the Danville the privilege of furnishing bond, and would not appoint a receiver if this were done. Throughout the entire course of this perplexing litigation, he has manifested the most solicitous regard for all the interests involved, and the most earnest desire to conserve these interests and to protect the rights of all parties."

Mr. Lawton was asked about this, and he frankly said, in effect, that in those days the Judge was deciding in his favor. It seems unfortunate for the Judge that in subsequent cases he has felt it his duty at times to decide adversely to the distinguished witness.

A VIOLATION OF THE LAWS IN DRAWING JURIES.

GREEN & GAYNOR JURY.

Mr. Marion Erwin, United States Attorney, made a motion in writing calling the attention of the court to the fact that at the approaching session of the court at Savannah, there would be submitted to the Grand Jury for consideration, charges against Green & Gaynor, and others connected with the alleged frauds in the river and harbor improvements, principally at Savannah, Chatham County, and in the coast territory contiguous to Brunswick, in the County of Glynn; that on account of the great notoriety attached to the three-months' court-martial trial of Captain Oberlin M. Carter, at Savannah, and a large number of persons who had heard the testimony there on oath, and the local connection of the contractors, and for other reasons stated, an impartial trial would best be promoted by drawing juries from the names in the jury box from counties other than Chatham and Glynn, and that such drawing would also save unnecessary expense by reason of the fact that there were so many persons disqualified from the counties of Chatham and Glynn by reason of their connections, having heard testimony in the court-martial case, that it would require repeated drawing of panels of juries and much delay in selecting the jury. The court knew these representations to be true, and passed an order on November 22, 1899, in accordance with Section 802 of the Revised Statutes that the jury be drawn from the jury box of the Eastern Division of the Southern District of Georgia from the names in the box, excluding the counties of Chatham and Glynn.

"Jurors shall be returned from such parts of the district, from time to time, as the court shall direct, so as to be most favorable to an impartial trial, and so as not to incur an unnecessary expense, or unduly burden the citizens of any part of the district with such services." Sec. 802 Revised Statutes.

This section applies to both grand and petit juries.

U. S. v. Stovall, 2 Curt. 153 (1854).
U. S. v. Agnew, 165 U. S. 36 (1897).
U. S. v. Ayres, 46 Fed. 651 (1891).

It is constitutional.

U. S. v. Penschal, 116 Fed. 642 (1902).
U. S. v. Ayres, 46 Fed. 651.

The drawing may be limited to the jurors in the box from a single county. As was done in the Agnew case, also in the Chaires case.

U. S. v. Chaires, 40 Fed. 820 (1899).
U. S. v. Price, 30 Fed. Cas. 16088.

"The constitutional amendment does not guarantee to the accused either a grand or petit jury to be composed of persons representing every locality in the district."

U. S. v. Penschel, 116 Fed., 642.

Section 802 Revised Statutes not repealed by Act of 1879.

None of these sections 800, 802, etc., are repealed by the Act of June 30, 1879.

Lovejoy v. U. S. 128 U. S. 172.
St. Clair v. U. S. 154 U. S. 134.
U. S. v. Richardson, 28 Fed. 61.
Agnew v. U. S. 165 U. S. 36.

Section 802 is re-enacted in the Judicial Code of 1912, section 277.

After making the order, which was made on motion in open court at Macon, the jury box of the District Court for the Eastern Division of the District was brought in by the Clerk and placed before the Judge, it being then properly under seal. The Marshal, Mr. Barnes, produced the key. The box was opened so that the tickets therein which

each contained the name of the juror and the county of his residence, folded with the name inside so that the name could not be seen until it had been withdrawn and opened. The record discloses the fact that there was present in the court-room at least the following officers, the Judge, the Clerk, the United States Attorney and the United States Marshal. As a matter of fact, there was also present the Judge's secretary, Mr. Talley, the bailiffs, and according to the recollection of the United States Attorney, other attorneys of the Macon Bar, who only left the court-room after the drawing had commenced. According to the recollection of the Judge and the United States Attorney, no person other than the Judge put his hand in the jury box. The Judge drew from the box one ticket at a time, opened the ticket, read the name and county, and if the juror so drawn was from any of the counties other than Chatham and Glynn, handed the ticket over to Mr. Lenoir M. Erwin, Deputy Clerk, who repeated the name and entered it upon the printed form which was to become a part of the writ of *venire*. If the name was drawn and read out by the Judge which appeared from the ticket that the juror was from either of the counties of Chatham or Glynn, it was handed over to the Clerk and put in an envelope until a sufficient number of jurors were entered on the list to complete the panel of grand jurors required.

The drawing was continued until twenty-nine names of jurors from counties other than Chatham and Glynn had been entered on the list. The list was then signed as having been made up from jurors drawn in their presence by the Judge, the Deputy Clerk, the United States Attorney and the Marshal. At the bottom of the list was a form of printed order which was then filled in by the Clerk which directed the issue of the venire and the date of return. This order was then and there consented to by the Judge in open court. The Clerk then issued the formal writ of venire and delivered the writ to the Marshal who was directed to summon the jurors to appear at the date fixed for the approaching session of the court at Savannah.

The indictment found on December 8, 1899, by that grand

jury at Savannah against Green, Gaynor, *et al.*, was attacked by the defendants by pleas in abatement, among other things because the drawing of the jury was made in open court in the Western Division at Macon instead of as contended, it had to be in open court in the Eastern Division at Savannah. The Jury Act, Section 2, of the Act of 1879 (21 Stat. L. 43) does not require that the jury be drawn in open court anywhere. The Act simply provides that the jury shall be "publicly" drawn. Mr. Justice Gray, held that "All that is required is that the drawing shall be done in a public manner." (U. S. *vs.* Richardson, 28 Fed., 61.)

The rules adopted for the Circuit and District Courts for this District by the predecessor of Judge Speer, the Honorable John Erskine, and by the Circuit Judge, provided that juries might be drawn even in vacation in the presence of the Judge, the Clerk, or his Deputy, the Marshal or his Deputy, the District Attorney or Assistant Attorney, the jury commissioner and such other persons as may chance to be present, not less than three. Rule No. 60, printed in 1880.

The Supreme Court of the United States had held that jurors drawn and residing in one division may indict for crimes committed in another division of the same District. *Barrett vs. United States*, 218, *Barrett vs. United States*, 169 U. S., 231.

The pleas of the defendants to that indictment were stricken on motion of United States Attorney by Judge Speer, and this ruling was assigned as a ground of error on the appeal of the Green & Gaynor case to the United States Circuit Court of Appeals, and that court held no error had been committed.

Prior to the filing of the above mentioned pleas in abatement, proceedings were instituted by the United States in New York for the removal of Green and Gaynor from the Southern District of New York to Georgia, under the provision of Section 1014, Revised Statutes. These proceedings were based upon complaint on oath with a copy of the aforesaid indictment attached as the basis upon which com-

plaint was made. In the proceedings before the United States Commissioner, John A. Shields, the defendants summoned to New York as a witness for the defense, Mr. John M. Barnes, United States Marshal, and L. M. Erwin, Deputy Clerk, to prove the manner of the drawing on November 22, 1899, of the Grand Jury which had found the indictment, as hereinbefore stated. The testimony of these two witnesses was taken before the Commissioner on behalf of the defendants. Mr. L. M. Erwin, the Deputy Clerk, testified as to the drawing substantially as hereinbefore set out. Mr. J. M. Barnes, Marshal, also testified then and there substantially in the same way as to what took place, and the manner in which the drawing was conducted. Mr. Barnes, however, then testified that he did, or may have helped the Judge in taking the tickets from the jury box.

The recollection of the United States Attorney and other officers present is to the contrary, they all agreeing that the Judge then and universally has drawn the tickets from the box himself.

In his testimony before this Committee, Mr. Barnes states that he does not positively recollect whether he did help draw the tickets from the box or not. The testimony of Mr. Barnes in New York before the Commissioner, is contained in one of the printed volumes of the testimony of the Green and Gaynor removal proceedings, which has been filed with the Committee. In the same volume is the testimony of Mr. L. M. Erwin, the Deputy Clerk, and also the written motions made by the United States Attorney, and the order of the court relative to the drawing hereinbefore referred to. Mr. Barnes in his testimony before the Committee, has given a very different account of the manner of the drawing from that which he gave before the Commissioner in New York, and claims that he remembers the facts better now than he did fourteen (14) years ago, when he gave testimony in New York. His excuse is that he did not testify as to the whole truth then because he was trying to keep from criticising the acts of the other officers of the court. The record shows that he was interro-

gated fully by the defendant, and his failure to speak the whole truth then, if the facts now stated be true, places him in such a position in regard to his present testimony as to make it necessary to comment upon the credit which should be attached to that testimony. He now testifies before this Committee, Record, p. 919, *et seq.*, in substance that the Judge drew fifty (50) names from the box and handed to him, Barnes, and asked him to look over them, and what about them, and if he knew any of them, and that he looked at them, and they were from the Southwestern Division, where he didn't know anybody, hardly, and in substance that the jury was made up in that way. This testimony is not only in full contradiction of Mr. Barnes' testimony in New York, but also of that of Mr. L. M. Erwin, Deputy Clerk, who testified in New York at the same time. Mr. Marion Erwin, United States Attorney, conducted the removal proceedings before the Commissioner in New York. His position that none of the testimony offered there for the purpose of attacking the indictment of the court of record in Georgia was competent in that proceeding, and no evidence was offered there in regard to the drawing by the Government.

Warrants for removal were granted by the United States District Judge in New York, and were sustained on appeal from *habeas corpus* by the Supreme Court of the United States. (*Green versus Henkel*, 183 U. S., 249, *Beavers versus Henkel*, 194 U. S., 85.)

Mr. Barnes was not the United States Marshal at the time of the trial of the Green & Gaynor case in the Spring of 1906, in the United States District Court at Savannah.

In the meantime Judge Speer, on demurrer by defendants, quashed two of the principal counts of the indictment found in 1899, as aforesaid, and the United States Attorney had submitted the charges again to the new Grand Jury which preferred another indictment against Green & Gaynor which covered the other counts of the earlier indictment as well as supplied with fuller averments the defects for which the two counts of the other indictment had been quashed by Judge Speer, and also still another indictment

had been returned by the Grand Jury bringing in new charges to meet certain phases of the extradition treaties and Canadian Statutes which were deemed of importance in view of the flight of the defendants to Canada and their return under extradition treaties.

THE SO-CALLED SPECIAL JURY BOX.

The first charge of unfair treatment made by the attorneys for the defendants related to the making up of what the defendants called a special jury box for the trial of the Green & Gaynor case.

To understand the situation at that time (January, 1906), it must be remembered that the crimes with which the defendants were indicted were charged to have been committed in the Eastern Division in 1897, and prior thereto.

Congress, by the Act of June 30th, 1902 (37 Stat. L. 551), had severed from the Eastern Division of the District certain counties, which, with certain other counties, were created by that Act into a new Division of the Southern District. That Act provided that prosecutions for crimes or offenses heretofore commenced in the Southern District as hitherto constituted shall be proceeded with as if this Act had not been passed. (Sec. 4.)

The jury box then made up consisted of only jurors from the Division as created under the Act of 1902. It was represented to the court by the United States Attorney, that by reason of the aforesaid provision of the Act of 1902, and by reason of the sixth amendment of the Constitution of the United States which provides that,

“In all Government prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and District wherein the crime shall have been committed, which District shall have been previously ascertained by law, etc.”

It would be, to say the least, doubtful as to whether or not

jurors from a box made up especially for the trial of cases for the Division as changed by the Act of 1902, would be subject to a legal challenge, and that the jury box should be made up under the laws applicable to the Eastern Division prior to the Act of 1902.

On November 4, 1905, on motion of the United States Attorney, Judge Speer appointed Hon. W. S. West jury commissioner, and directed that he and Mr. Tomlinson F. Johnson, Clerk, make up in conformity with the Act of Congress of June 30, 1879, a jury box containing five hundred (500) names of jurors to be selected by them from certain counties, to-wit, Lowndes, Brooks, Decatur, Thomas and Berrien, of the Eastern Division of the District, as said Eastern Division was constituted prior to the Act of 1902. Mr. West was a resident of the Division, and had been President of the Georgia Senate, a well known Democrat, and a man whose character has always been of the highest. Mr. Johnson, Clerk of the court, was a well known Republican. These commissioners selected five hundred (500) names and placed them in the box in accordance with the order of the court. In accordance with the rules of the court adopted for the District Court by the predecessor of Judge Speer, the Honorable John Erskine, and for the Circuit Court by the Honorable William D. Woods, Circuit Judge, the names and county of residence of the jurors placed in the box by the Clerk and jury commissioner, were recorded in a record book kept by the Clerk. This was a public record, subject to inspection by the Marshal, for his convenience in serving summons upon jurors, and by the attorneys, or any other persons interested in the jury trials which might arise in court. The order of November 4th, 1905, appointing the jury commissioner and directing that he and the Clerk make up the jury box, was made at Macon where the Judge was then presiding. The Act of 1879 (Sec. 2) provides that the jury commissioner shall be appointed by the Judge, and the appointment is not by law required to be by the court. It was not therefore, an order that had to be entered in open court either at Macon or Savannah. The Act of 1879 does not make it a requisite of the validity of the making up of

jury boxes by the Clerk and commissioner, that there shall be any formal order at all. The only requisite in that respect is that there shall be in the box the names of at least three hundred (300) persons with the qualifications prescribed, whose names shall have been placed therein by the Clerk and jury commissioner appointed by the Judge.

The letter of Judge Speer, dated November 4, 1905, to the Clerk of the Court at Savannah, enclosing the order, is given on page 1435 of the Committee Record, as read by Mr. Lawrence. In this letter, among other things, the Judge stated:

“While the order itself should be placed on the minutes of the 9th inst., which is the first day of the term, there is no occasion for its publication at present and this should be avoided. It is the duty of all connected with the court to avoid anything which would create sensation and excitement. My only object is to secure an impartial jury; a thorough, deliberate and satisfactory hearing and trial of these important cases. I feel sure that I have the right to ask your best efforts to bring about this result.”

Mr. Lawrence had construed the direction of the Judge to the Clerk, directing him to put the order of November 4th, on the minutes of the court on November 9, 1905, that being the first day of the approaching session, as a disregard of the legal right of the defendants. It is difficult to see what legal rights of the defendants would be invaded. For obvious reasons of public policy, to have made a formal publication through the newspapers that the Clerk and jury commissioner were engaged in the important task of selecting five hundred names from the body of the District to constitute the jurors at the approaching term of the court, at which important Government prosecutions were to be tried, might have resulted in the failure of justice in trial or prosecution of the causes. It would have subjected the Clerk and jury commissioner probably to a flood of applications from more or less irresponsible persons, directly or indirectly, to put their names in the box.

It might have resulted, through the efforts of persons charged with crime, in having their friends or tools included in the list for the purpose of thwarting the ends of justice. The defendants, who were subsequently shown, not only by the trial before the District Court in Savannah, but in the civil trial in numerous other courts of the United States, and by the final adjudication of the Supreme Court of the United States, to have embezzled over two million dollars from the Government, could hardly be expected to refrain from improper methods which might have deceived even the most conscientious jury commissioner and clerk. The direction of the Judge not to advertise the fact that the jury commissioner and Clerk would be engaged in their work, was wise and salutary.

The Statute, as we have already seen, did not require any matter to be spread upon the minutes at all. Nevertheless, the Judge directed that it be entered upon the minutes within five days from the time. The order was entered after the first day of the session of the court, to which minutes all the attorneys practicing in the court at Savannah, including Mr. Lawrence, had access.

As is shown by the Committee (Record, p. 1512), on November 16, 1905, a jury was drawn from the jury box so prepared by the Clerk and jury commissioner, which drawing was in open court at Savannah in the presence of the Judge, the Clerk, the United States Attorney, Marion Erwin, Mr. Alexander Akerman, Assistant United States Attorney, and the United States Marshal. Thirty-six (36) names were drawn and from the jurors returned, a panel of grand jurors was impaneled.

On November 18, 1905, in open court, Mr. Lawrence testified (p. 1438), that either the District Attorney, or the Judge sent defendant's counsel a note informing him that the Judge would charge the grand jury relative to these cases, and the defendant's counsel was present when the grand jury was so charged, and they made no objections. This grand jury returned two additional indictments against Green & Gaynor and others covering certain offenses bailable under the extradition treaties, in addition to

those for which they had been previously indicted. An order of the court, spread on the minutes of November 16, 1905 (Rec., p. 1513), recites the making up of the jury box by the Clerk and Mr. West, and Mr. Lawrence and other counsel for defendants, if they failed to be alive to what was taking place in open court in the city of their residence, ought not to be allowed to place their own laches to the charge of the Judge.

Mr. Lawrence, in his testimony, states that he did not know anything relative to the making up of the jury box by the Clerk, Mr. Johnson, and Mr. West, until early in January, 1906. He testified before the Committee that some time, about six weeks prior thereto, the exact time he did not remember, he asked Mr. Johnson about the making up of the jury box which he had heard rumored was being done, and that Mr. Johnson told him none had been prepared, and that he did not bother himself to look on the minutes between that time and the first of January, 1906. It may well have been that the conversation between Mr. Lawrence and Mr. Johnson occurred even prior to the time when the jury box had been prepared. At any rate, the only direction given by the Judge to Mr. Johnson appears in the written order from the Judge to the Clerk, already referred to, which directs the Clerk to enter the order on the minutes at the opening of the session on November 9, 1905, and there was certainly no direction from the Judge which authorized Mr. Johnson to misrepresent the facts to any one.

THE GREEN & GAYNOR TRIAL JURY.

Mr. Lawrence and Mr. Osborn next complained that an injustice was done them in that the traverse jurors drawn for the trial of the Green & Gaynor case were not drawn from the box at the opening of the session of the court on January 9, 1906, when the Green & Gaynor cases were called.

To understand the situation, the following facts are pertinent:

As already stated, the first indictment, number 322 preferred by the grand jury on December 18, 1899, had been at the February term, 1902, of the District Court at Savannah, demurred to by the defendants, and Judge Speer had sustained the demurrer to two of the principal counts in the indictment. This was after the defendant had given bond on the removal proceedings in New York, to appear in Georgia. They had appeared, and were successful before the court to the extent above stated. At the February term, 1902, the District Attorney obtained a new indictment, number 371, in which the allegations covering the two counts of the old indictment quashed were thought by the United States Attorney to be covered, and the defendants immediately took their flight to Canada and their bonds were forfeited. After their extradition from Canada, in October, 1905, and after the additional indictment returned on November 18, 1905, the case was set for pleading on January 8, 1906. The United States Attorney notified the Judge that he desired to have all the preliminary questions disposed of before the trial jury was called, as the Government had a large number of Government witnesses, consisting of United States army officers engaged in public duties in different parts of the country, and that most of them would have to come from even so far as California.

It was not known to the District Attorney or to the Judge, what the latter's rulings would be on the indictments against the defendant, numbers 371, 476, 477, on the demurrers and pleadings which the defendants would probably file.

If the court should find them defective, there would be a large waste of public money in bringing witnesses from all over the United States, and keeping jurors unnecessarily in attendance while a new grand jury was being summoned and new indictments found. It is not unusual, but we think a general practice, that questions should be disposed of even prior to the assignment of cases for the formal jury trial. There is certainly no rule of law against it, and in a case of the character in discussion, in the interest of public justice and economy, there is every reason for so doing.

When the case was called for pleading on January 9, 1906, the defendants filed numerous pleas in abatement to indictments numbers 371, 476 and 477, not only on the grounds of alleged irregularities in the making up of the jury boxes and the drawing of juries heretofore referred to, but also special pleas that the defendants were being tried for offenses not provided for in the extradition treaties. The court heard elaborate arguments on these various dilatory defenses, and on the extradition question, admitting testimony, and finally struck the pleas. The defendants then demurred to indictments 371, 476 and 477 and after the elaborate arguments and demurrs were overruled.

On January 16, 1906, all of the preliminary questions having been disposed of adversely to the defendants, they pleaded not guilty to indictments 371, 476 and 477.

They had already on February 2, 1902, pleaded not guilty to indictment number 322.

On motion of the United States Attorney on January 16, 1906, the four indictments were consolidated and the case was then for the first time in a condition where there was any certainty that a jury trial could be had.

Following the disposition of these preliminary questions on January 16, 1906, a sufficient number of traverse jurors to allow for expected challenges for cause were finally drawn from the jury box in open court at Savannah in the presence of defendants and their counsel. The counsel for the defendants admitted they were present at that drawing.

The order of the court for the issue of a *venire* returnable on January 19th was entered in open court in the presence of counsel for the defendants. They made no motion asking for further time. The jurors were summoned by the Marshal through his deputies, at their homes in the respective counties in which they lived.

Defendant's counsel admit that they got a list of the jurors drawn and the counties of their residence on the day the jurors were drawn in open court. Mr. Lawrence and Mr. Osborn now complain that the four days between

the drawing of the jury and the return of the jurors on January 19th, did not give them sufficient time to investigate the jurors, some of whom were in counties more than one hundred and fifty (150) miles from Savannah. As a matter of fact, the jurors lived in towns, or very near thereto, in counties through which the railroad passed from Savannah.

Mr. Lawrence testified (p. 1443), that prior to the drawing of the traverse jury on January 16, 1906, defendant's counsel sent four or five young men down to the counties from which jurors were likely to be drawn, and that as soon as the jury was drawn that they wired the names of the jurors to these agents in the respective counties, who telephoned them back information relative to the different jurors. He states that the men sent down were reputable. The statement of Mr. Lawrence that they had sent these young men to the particular counties from which the jury box was drawn, is an admission that counsel for the defendants did know of the previous orders of the court under which the jury box was made up, certainly at that time; they certainly must have known it as early as November 18, 1905, if not earlier, because they were then present in court when the grand jury was impanelled and charged relative to the law, affecting these individual defendants.

From the traverse jury put upon the defendants by the United States, January 19, 1906, the twelve jurors who tried the case were selected, after which each juror was put upon his *voir dire*, which took five or six hours. If the jurors had been drawn from all the counties of the Division, including the counties of Chatham and Glynn for the reasons heretobefore stated it is probable that so many of the jurors would have disqualified by reason of their connection with the large contracts of Green and Gaynor, or because of hearing the testimony in the court-martial proceedings, and other causes, that it would have taken ten days or two weeks to get a qualified jury, and when one was so obtained it is quite probable that some juror might have been obtained too much interested in side issues to the con-

troversy to render a fair verdict. Judge Speer was informed by Mr. Marion Erwin, United States Attorney, after the twelve jurors had been selected, sworn and segregated, and other jurors not taken excused, that a number of the latter, before leaving for their homes, had reported to him that after they had been summoned, and on their way to court, they had been approached by strangers on the train who endeavored to engage them in conversation and commit them to an expression of opinion in regard to the guilt or innocence of the defendants, Green and Gaynor, and that they had seen some of the men that morning talking to the defendant's counsel, and felt it their duty to report them to the United States Attorney. The Judge did not think that the ends of public justice would be promoted by making an investigation further into the matter.

There is no statute or rule of common law which required that the defendants in ordinary cases shall have any given number of days' notice of the individual jurors summoned from the body of the District from which a jury to try their cases are to be selected. Sec. 1033, Revised Statutes provides that in capital cases a list of jurors shall be delivered to the defendants at least two entire days before the trial. The Green & Gaynor case was not a capital case, and yet the defendants had three full days' notice of the names and counties of residence of the jurors summoned. It is probable that in ordinary cases Congress had in mind the advisability of not having jurors approached by defendants before trial when it did not make such provision in regard to ordinary cases. Certainly the defendants had notice as early as November 18, 1905, and they were in court when the court charged the grand jury the law applicable to their cases, with the probability of their cases coming up in court at that time. Defendants' counsel knew of the published rules of court in existence for years regarding the record to be made of the jurors in the jury box. They had two months within which to have found out about the antecedents and character of every juror on the jury list, which consisted of five hundred names.

It now seems they are charging Judge Speer with unfairness to excuse their own laches in performance of duties which devolved upon them as counsel.

To these questions made by the defendants' counsel on the trial of the Green & Gaynor case, exceptions in regard to the ruling of the court were noted. They made their assignments of error, and after a full review of the entire case by the Circuit Court of Appeals, the rulings of Judge Speer on those and other questions were sustained.

BRANEN JURY.

Mr. T. S. Felder criticises the action of the court in ordering the Marshal to summon a jury in the Laidler Branen and John Branen case, tried in March, 1910, the Branens being charged with peonage.

The complaint is that on the day before the trial, he looked at the minutes and did not see any order of the Judge for the summoning of a jury, and that on the morning of the trial he saw a number of jurors present, all from the city of Macon or county of Bibb, and on examining the minutes he found the order on the minutes by the Judge, directing the Marshal to summon a jury for that case, that he knew that the jurors so assembled were not drawn from the jury box, that the jurors were all men of high standing in the community and notwithstanding the fact that he believed that they had been irregularly summoned, he decided not to raise the question, that he tried the case and acquitted the defendants.

The minutes of the court show that on the 26th day of February, 1910, there was an informal order entered by the Clerk as is usual where an oral direction is given by the Judge from the bench, which order directed the Marshal to summon fifteen tales jurors, and return them the next day. Following that, on the same day, there was a written order covering the same matter, written on the minutes, which written order was signed by the Judge. It is required under the State practice for the Judge to sign every

order that is entered on the minutes of the court. In the Federal Court the practice in a greater number of Districts is that the Clerk enter the order under the direction of the Judge, either orally given or from memoranda initialed by the Judge. It is probable that Mr. Felder failed to notice the Clerk's memorandum order when he examined the minutes on the day before, and it is probable that the former written order was signed by the Judge somewhat later on the same day and handed to the Clerk. This accounts for the fact that two orders covering the same subject matter appeared on the minutes. Mr. Felder only noticed the latter order on the next day.

Section 804 Revised Statutes, provides that "when from challenges, or otherwise, there is not a petty jury to determine any civil or criminal case, the Marshal or his deputy shall, by order of the court in which such defect of jurors happens, return jurymen from the bystanders sufficient to complete the panel."

This section of the Revised Statutes was not repealed by the Act of June 30th, 1897, *Lovejoy vs. U. S.*, 171, *St. Clair vs. U. S.*, 154, *U. S.*, 134. *U. S. vs. Richardson*, 28 Fed., 61. *Agnew vs. U. S.*, 165, *U. S.* 36.

Mr. Felder now makes the point that the entire panel of jurors summoned in the Branen case was so summoned by the Marshal under the order of the court, and in order to make the jury valid there should have been some of them previously drawn from the box under the Act of 1897, and that where all are summoned as tales jurors, the panel is illegal. It does not appear that this exact question has ever been decided by any of the Federal courts. It is not improbable that if the matter had been called to the attention of the Judge, Mr. Felder's argument on that subject would have been persuasive, but it appears that although he testifies that he had knowledge of the facts not stated by him at the time, he refrained from calling it to the attention of the court. It is certain that the jury selected by the Marshal under the order of the court in general terms, directing him to summon jurors, would be a good jury at common law.

It would be the duty of the attorney as well to his client as to the court, if he believed an irregularity had been committed, to have called the attention of the court to it. It seems that Mr. Felder prefers to attribute deliberate intention to the Judge without even having given him the opportunity to correct the error, if error it was, of which he was wholly unconscious.

JURY DRAWN AT MOUNT AIRY.

Mr. Alexander Akerman testifies (Rec. 1089) that on one occasion the Judge had the jury box of the Eastern Division sent to his summer home at Mount Airy in the Northern District, and wrote to him that on account of his health, he desired the Assistant District Attorney to go up there to be present at the drawing of the grand jury. This for the fall term, 1912, of the court to be held in Savannah. This is cited as an illegal and corrupt act on the part of the Judge. Mr. Akerman states that he doubted the authority of the court to draw a jury outside of the District, and reported his views to the Attorney General. The latter authorized him to send his assistant to Mount Airy, which was done.

As already referred to, the Act of 1879, notwithstanding the contention of Mr. Lawrence and Mr. Osborn, and others, does not require a jury to be drawn in open court, nor does it state where juries are to be drawn. The simple requirement is that it be drawn in a public manner. The rules of the court already referred to, which were prescribed by the Honorable John Erskine, predecessor of Judge Speer, of the District Court, and by Mr. Justice Woods, provided for the drawing of juries in vacation, and it was deemed by them a public drawing if it be done in the presence of the District Attorney and Marshal and Clerk. Certainly the course of the Judge in calling for the presence of the United States Attorney at the drawing, and the other officers of the court, which the record shows, were present, before he would make the drawing, indisputably shows that it was

the intention of the Judge to have a public drawing, or to have a sufficient number of reputable officers and persons present who would be able to testify to the fairness of the drawing. Evidently the Attorney-General did not take the view of Mr. Akerman, or he would not have directed the assistant to be present.

The view of Messrs. Osborne and Lawrence relative to the contention that the jury must be drawn in open court and of Mr. Akerman that it cannot be drawn out of the District, seems to be founded upon the theory that the "public" drawing prescribed in the Act of 1879, was intended to afford every defendant and litigant the opportunity of being present at the drawing, and that it gave to them a legal right which they did not possess at common law. This is not the view entertained by Judge Speer, nor by Judge Erskine and Mr. Justice Woods; which is that the drawing must be made in the presence of a sufficient number of reputable persons to prevent the commission of any fraud or improper conduct. The Statute does not require any particular notice to be given prior to the drawing. The course taken by Judge Speer to have the Assistant United States Attorney and others present at the drawing at Mount Airy, absolutely negatives any idea of wrong doing on his part.

The orders for the drawing of the panel of jurors drawn were entered on the minutes of the court at Savannah. It does not appear that there was ever any challenge of the validity of the grand jury, and certainly no wrong has been done to any one.

The gravamen of Mr. Akerman's criticism arises over the fact that the Judge performed the function of Judge in the Northern District of Georgia instead of the Southern District of Georgia.

If the objection is good, then no Judge can sign any order outside of the District for which he is appointed. It is the view of Judge Speer that certainly interlocutory orders can be signed by the Judge in matters pending in his District, even though he be outside of the District, as for instance where a District Judge is presiding in the Circuit Court of

Appeals in other Districts, or where he is assigned to hold a court for a Judge in some other District. In fact that this is universally done by Judges is well known; presumably in other Districts, or where he is assigned to hold a court for a Judge in some other District. In fact that this is universally done by the Judges is well known; presumably the other Judges, like Judge Speer, believe they have that authority. The practice in very many of the Districts is that the Judge simply directs the Clerk and jury commissioner to draw the juries from the jury box, and that function is performed by those officers entirely independent of the Judge, and usually in the Clerk's office. A recent instance is where District Judge Foster, of Louisiana, presiding in the United States Circuit Court of Appeals at Atlanta, Georgia, in the Northern Division and District, passed an order directing the Clerk at Augusta to draw a jury from the jury box of the Northeastern Division of the Southern District for the court to be held at Augusta by Judge Foster. That occurred in 1913.

A similar instance occurred in February, 1914. Judge W. B. Sheppard, of Florida, who had been designated for the Southern District of Georgia, was holding court in Macon, and desiring to hold court the following week at Valdosta in the Southwestern Division, directed the Clerk at Valdosta to draw a jury for that session of the court, which was done.

There are certain judicial matters which it is generally understood require disposition in open court at a term of court, such as jury trials and final judgments at law, and final decrees in equity.

The rules of the Supreme Court only provide that interlocutory decrees and proceedings can be disposed of otherwise than in open court. Notwithstanding this, it has been ruled that where both parties consent, a final decree in equity may be signed by the Judge out of the District and entered at a term, which would be binding between the parties.

We think the above is sufficient reply to the criticism of any wrong intention on the part of Judge Speer, or abuse

of his authority in drawing one grand jury at Mount Airy in the course of twenty-nine years of judicial service.

THE JURY IN THE MILLER CASE.

Mr. S. B. Adams criticises the action of Judge Speer in making the order which directed the Clerk and jury commissioner to make up a jury box from which was drawn the jury which tried the case of the United States *versus* Miller, and others, charged with a violation of the Interstate Commerce laws. The criticism made is that the order undertook to specify how many jurors the jury commissioners should take from each of the counties mentioned in the order. The contention of Mr. Adams, who represented some of the defendants in that case, is that the Judge had no right to limit the jury commissioners in the particular number of jurors to be taken from any particular county.

Section 802, Revised Statutes, provides that jurors shall be returned from such parts of the district from time to time as the court shall direct so as to be most favorable to an impartial trial, and so as not to increase the unnecessary expense or unduly to burden the citizens of any part of the District with such services.

Judge Speer thought that the above provision of the Statute gave him the authority to fix the number of jurors to be taken from the respective counties, and the order was made without respect to any particular case, but had reference to the general business of the term. It does not appear that the supposed authority was exercised by the Judge except in that particular instance. The numbers assigned to each county were approximately based on the last census. On appeal, the Circuit Court of Appeals took the view that the restriction imposed by the Judge on the jury commissioners relative to the particular number of jurors which should be taken from the county was not authorized by law, but held that it was a mere irregularity of which the defendants could not avail themselves without showing prejudice which they had not done. (199 Fed., p. 903.)

PEONAGE CASES.

The offense of peonage which consists of an involuntary form of servitude prohibited by law, presents many perplexing problems to the white people of the South in dealing with unskilled negro labor on the farms, in the saw-mills, and around turpentine plants. The principal laborers in these industries are negroes, some of whom are lazy, shiftless and unreliable, and after obtaining money in advances to satisfy their immediate wants on a promise to pay for the same in labor, they abandon their contracts and seek other advances from other employers. This evil has led to the enactment of contract labor laws in many of the Southern States, some of which have already been declared unconstitutional, and others are of doubtful validity. These contract labor laws, together with the prejudice engendered in the minds of the white people against the shiftless and unreliable members of the negro race furnish opportunity and temptation to the not overscrupulous employers needing labor to commit the offense of peonage. The universal interest of all employers to have their employees carry out their contracts, and the difficulties which they frequently have in this respect with some unreliable negro laborer makes them apprehensive as to the general effect on this class of negro labor of a rigid enforcement of the laws against peonage. For these reasons the enforcement of the peonage laws are not generally popular with the employers of this class of labor.

It is this condition of affairs which is sometimes taken advantage of by the selfishness, avarice and reckless disregard of human rights on the part of some white men in dealing with the more ignorant and weaker members of the inferior race, and leads to the development of traffic in human beings, confinement in stockades, the applying of the lash and other acts of cruelty and inhumanity, shocking to the sensibilities of a liberty-loving people. The extreme cases

like this where the facts are all developed, the juries will generally convict. In other cases where there is no proof of physical violence or actual confinement, they are less apt to convict, notwithstanding the injustice and wrong done the peon, in the restraint of his liberty and the enforcement of involuntary servitude. Especially is this true where the jurors come from among those employing this class of labor. But it is the duty of the court to enforce the laws of the land regardless of whether they are popular or unpopular.

CHAUNCEY CASE.

Mr. Felder, who represented the defendants in this case, complains that while he was making his argument in the way of an opening statement to the jury he was repeatedly interrupted by the court, at first because he was making an argument attacking witnesses in advance of the introduction of evidence, instead of an opening statement of his case, and finally because of his appeal to the race prejudice of the jurors by the repeated use of the words "nigger, nigger, nigger" in referring to the parties whom it was charged the defendants had held in peonage. Mr. Felder's own account shows that he was clearly, persistently and defiantly violating all the proprieties of a fair trial. It is the duty of the trial judge to police the trial and to use such means as are necessary to enforce a fair trial and failure on his part to faithfully perform this duty, attended sometimes with unpleasantness, often causes greater wrong in the miscarriage of justice than the harm done to the wounded pride of the overzealous and too persistent advocate.

A similar rebuke to counsel for appealing to race prejudice administered by Judge Speer in the case of *Battle vs. United States*, 209 U. S., 39, was approved by the United States Supreme Court as follows:

"Finally an exception was taken to an interruption of the Judge, which did not tend to degrade the administration of justice. The reference was to an appeal to race prejudice and to such language as

this—"You will believe a white man not on his oath before you will a negro who is sworn. You can swallow those niggers if you want to, but John Randolph Cooper will never swallow them." The interruption was fully justified."

CRAWLEY-MCCELLAN CASE.

United States *vs.* W. F. Crawley and J. T. McClelland, charged with peonage, was discussed by W. W. Osborn, A. A. Lawrence, J. Lee Crawley, Jno. C. McDonald and W. M. Toomer. The complaint made is that the Judge coerced the defendants to plead guilty by his remarks overruling a motion to direct a verdict for the defendants, by certain questions he asked Ed McRee, a witness who had pleaded guilty to holding in peonage the very parties that Crawley and McClelland were indicted for returning to a condition of peonage, and by making overtures to the defendants' counsel that he would make the sentence lighter if they would plead guilty.

Mr. Toomer, leading counsel for the defendants, was until recently, residing at Waycross, Ga. He has been a member of the Georgia Legislature. Since his removal to Jacksonville, Fla., he has on several occasions returned to Georgia under the authority of the Attorney-General of the United States in the capacity of Special Assistant District Attorney in the prosecution of anti-trust cases. He says (Committee Record, p. 1713), "I was astounded to learn that this transaction was to be made the subject of inquiry in these proceedings."

About the year 1904, six indictments were returned against T. J. McClellan, and four indictments against W. F. Crawley and T. J. McClellan, charging them with arresting or returning to a condition of peonage, the several parties named in the indictments.

Demurrers were interposed and argued at length, the decision of Judge Speer overruling the demurrers will be found in 127 Fed. Rep., 971.

The facts as developed on the trial of the case were that McClellan was the Sheriff of Ware County, and also jailer. Crawley was a lawyer. Henry Brunage and Dave Smith, two colored boys, were arrested and tried for stealing a watermelon, and were convicted before the Judge of the County Court of Ware County and sentenced to imprisonment in Ware County, with no alternative of fine. Mr. E. J. McRee was asked to come for the boys by Crawley. McRee testified: "I received a letter from Mr. Crawley, which I cannot find after search, in which he asked me to come to Waycross, that there were some boys there who wanted to come to my place." McRee went to Waycross and accompanied by Crawley and McClellan went to the jail where the two boys were confined, and also found outside of the jail Jeff Brunage, a brother of one of the boys in jail. Jeff was not charged with any offense, but "was just out there interceding for them," McRee gave a check for these boys, the check being dated Aug. 6, 1903, for \$65, payable to the order of T. J. McClellan, payable at the Citizens Bank of Valdosta, and endorsed by T. J. McClellan. This was to cover the fee of Mr. Crawley, the lawyer, and the jail fees of Mr. McClellan. Although in jail under commitment, and no provision made for release upon payment of a fine, and no order of any court authorizing their release, the two boys were turned over to Mr. McRee, and not only were they carried to the plantation of the McRees at Kinder Lou, but the little brother who was "interceding for them" was also carried to the plantation, and E. J. McRee afterwards pleaded guilty to holding all three in peonage.

Another of the indictments charged a similar sale of Lula Frazier, who had been arrested for adultery, but on the hearing before the County Judge, he decided that if she was guilty at all, it was of bigamy, of which offense his court did not have jurisdiction. While she was in jail, with no charge against her, Mr. Crawley, her lawyer, telephoned to the McRees, as follows: "E. J. McRee, Valdosta, Ga. Come to Waycross for woman. W. F. Crawley." Mr. Frank McRee went to Waycross for her, and was accompanied to the jail by Crawley and McClellan, the latter

being the jailer. McRee gave a draft for \$50 to Crawley, and the woman was released and carried to the Kinder Lou plantation in Lowndes County. This draft was dated Aug. 27, 1902, payable to W. F. Crawley, for \$50, drawn on the Citizens Bank of Valdosta, and signed by Kinder Lou Mills, by F. I. McRee.

Other checks were tendered in evidence, in payment for other negroes, one for \$88, payable to T. J. McClellan, for George Davis and Ed Hardy, dated July 8, 1902, George Davis carried his wife with him to the Kinder Lou plantation. Another check for \$40, dated Aug. 11, 1902, payable to T. J. McClellan, in payment for John Wesley Bowen. A third check was dated December 15, 1902, payable to T. J. McClellan for \$240, for "four men and one woman."

The two boys charged with stealing a watermelon were kept at McRees for six months and ten days each, and Lula Frazier, the woman who had not been convicted of any offense, was kept there seven months.

The McRees at that time operated a large plantation in Lowndes County, about seventy miles from Waycross, where these parties were confined in jail. They also operated a large crate factory. About two hundred hands were employed by them, many of them obtained in the manner above described. The negroes were worked under guard, locked up at night, whipped by overseers, and made to work out the money advanced to them. They were not permitted to leave the plantation. Some escaped and were captured, some made good their escape. The Prison Commission of Georgia made an investigation of the conditions at the McRee plantation a short time before these indictments were returned, and as Mr. E. J. McRee stated, "did not exonerate us entirely."

This is a partial outline of the testimony of the Government. The District Attorney tendered in evidence the pleas of guilty of the McRee brothers to a number of indictments charging the holding of numerous parties in peonage, including the parties named in the indictments against Crawley & McClellan. On objection, the court reserved its decision on this point, but admitted the evidence of McRee

as to the actual conditions on his plantation. The boys also testified as to their treatment and as to conditions there. A motion was then made by the defendants for a verdict for the defendants. Their principal argument being that Crawley and McClellan did not know that the McRees were holding persons in peonage and therefore did not knowingly send the negroes to a condition of peonage. Judge Speer then made the remarks set out in the Committee Record, p. 1528, which Mr. Osborne denominates a "stump speech," and which it is asserted terrified the defendants into pleading guilty. It may be that a narration of the Government's evidence by the court may have impressed them more strongly than they had formerly believed, that they were guilty.

Messrs. J. Lee Crawley, A. A. Lawrence, W. W. Osborne, and Jno. C. McDonald, in their evidence, given from memory after a lapse of ten years, speak of efforts being made by Judge Speer to coerce the defendants into a plea of guilty, and strive to leave the inference that such overtures were made through Mr. Robert M. Hitch, an attorney of Savannah, and J. N. Talley, the Judge's stenographer at that time. There is no evidence that Judge Speer made any suggestion to either of those gentlemen about the case, and the witnesses are widely variant as to such alleged overtures. For instance, Mr. Osborne testified "That during the trial, early in the morning session thereof, Mr. Talley, who was then court stenographer, talked several times to Mr. Lee Crawley, Mr. Will Crawley's brother, suggesting a plea. . . . Now, all this time I was trying the case in this court-room Mr. Lee Crawley was outside. . . . three times during the day, when Mr. Crawley would come in and we would have to stop and turn around to hear these suggestions about what we ought to do in our own case." Mr. Osborne probably overlooked the fact that Mr. J. N. Talley was all this time sitting at the table in front of him reporting the evidence, and could not very well be conferring with Mr. Lee Crawley on the outside. Mr. Osborne also states that the Judge in that case held three sessions a day, morning, afternoon and night. As Mr. Talley and Judge Speer were stopping at different

hotels it is obvious that little time was available for such conferences during the trial.

Mr. Talley was in the court-room, and was sworn as a witness, but was not asked as to this transaction. Mr. Robert M. Hitch, an eminent lawyer of Savannah, who is said to have first suggested the advisability of a plea of guilty, was also available as a witness, but there is no suggestion in the evidence that Mr. Hitch had spoken a word to Judge Speer about the case.

Mr. Toomer, the leading counsel for the defendants, Crawley and McClellan, and the attorneys who called on the Judge in his chambers, after the adjournment of court in the afternoon, thus gives his views of the matter (Committee Record, p. 1712) :

"I think that Judge Speers' idea was that these were young men, and that the status was novel, as I say, and the whole idea that he was to communicate his willingness to deal with them leniently in that the first instance. I was astounded to learn that this transaction was to be made the subject of inquiry in these proceedings. I think they (my clients) got the impression from the utterances made by Judge Speer from the bench that all sorts of things might happen to these young men if they were convicted. I never thought so; I never saw a man in my life more vigorous in endeavoring to have juries declare the truth, and to ascertain himself the law. But I never in my whole life knew a more humane Judge than Judge Speer in final execution, and I did not have any idea he would punish them severely. He did not, positively, did not give me the impression that if they did not do it (plead guilty) he would punish them for not doing it."

The prevalence of peonage, the novelty of its prosecution, the prejudice against the enforcement of the law in the popular mind, all naturally led the court to believe that a plea of guilty, with a fine, would have a more beneficent effect in calling the attention of the public to the provisions and purposes of this statute and be more persuasive and effective in causing the people to conform to the spirit of the law, without the necessity of numerous prosecutions,

than would be the case of a verdict of guilty, where guilt was unquestionable, and the severe penalty of the law imposed, or a verdict of not guilty, because of local prejudice against the law. It is difficult for an impartial mind to read the record in these cases and reach the conclusion that the defendants were not guilty. The Judge thought this guilt due rather to ignorance of the peonage laws, than to a wilful disregard of the provisions of those statutes prohibiting the enforcement of involuntary servitude. Believing this, he was fully justified in making all the concessions which Mr. Toomer, the leading counsel for the defendants, states that he made to him, in the conversation at night, at the close of the Government's case. In the administration and enforcement of the law by the court, the general welfare of the people is of vastly more concern than the mere professional pride of able criminal lawyers defending parties charged with crime. The pleas of guilty in these cases were voluntary, the punishment was light, the attention of the public was called to the provisions of the peonage laws, and the condition of many unfortunate members of that race, whose lot has been cast with ours, was unquestionably greatly ameliorated without the expense, burden, and inconvenience of wholesale prosecutions.

In this connection, attention is called to the following estimate of Judge Speer by Mr. Toomer, leading counsel for the defendants in these cases, taken from Committee Record, pages 1728-1730:

Mr. Callaway: Would you or not express your opinion as a lawyer practicing in these courts, on Judge Speer as a Judge, as an official?

Mr. Toomer: I will do so. I have, while I heard some slight testimony to the contrary, always had the impression that Judge Speer was a very hard worker. He certainly worked out very promptly and thoroughly every case I ever had any personal knowledge of, when I was representing the Government, as I have done in a number of cases, or the defendants, or in civil cases. I think that the Judge is a Judge of commanding capacity. I think that his capacity as a lawyer, and as a literary man as well, is simply

superb. I have never been able to convince myself, after twenty years of my knowledge—and he has never done me a financial favor in his life—I have never been the recipient of an appointment that meant one dollar to me, from him, I have tried cases that I lost in his court—but I have never been able to think that Judge Speer was not personally honest and judicially honest, and adding to that the opinion that I entertain in regard to his capacity, I am very glad indeed to answer that question. I will go further, Judge Callaway, and say this, that while there are some men, we all have our peculiarities, I know some very distinguished members of this Bar who have grievances of manner, and this and that and the other kind against Judge Speer, my own opinion is that the rank and file of the plain people and business men of this district, find in Judge Speer and in his court a perfect terror to evildoers, not because of the severity of sentence he is going to impose, but because of the certainty of their conviction in his court. When I lived in Georgia fifteen years ago, I lived one hundred miles away from here, and nearly two hundred from Macon, but I know the Judge and know of him pretty well, and practiced a lot in his court.

NOT DIRECTING JURY TO RETIRE WHEN PASSING ON MOTION
OF COUNSEL.

One of the criticisms of alleged unfairness on the part of Judge Speer is that when in certain cases the defendants' counsel at the conclusion of the evidence made a motion to instruct the jury to render a verdict of not guilty for want of sufficient evidence to warrant the submission of the case to the jury and requested the Judge to have the jury retire during the argument of counsel and the delivery of the opinion of the court on the motion, the Judge did not direct the jury to retire.

There is no rule of law requiring that the Judge direct the jury to retire in such cases. At best the matter is left to the sound discretion of the Judge. In the Federal courts

where it is the duty of the Judge to sum up the evidence, in general, there is no sound reason why the jury should be required to retire. Whether the jurors are enlightened at that time by the argument of counsel and the opinion of the court as to the *prima facie* bearing of the testimony or that duty is reserved until after the final arguments and in the charge of the court, they are certainly entitled to have the same enlightenment and the same views expressed as to the *prima facie* bearing of the evidence before the trial is over, at one time or another. Certainly if the defendants have a meritorious attack on the Government's testimony along the lines which the jury are entitled to consider, the opportunity afforded the jury to have the views of the defendant's counsel stated in advance of the final argument is advantageous for them. In those States where the court is not allowed to sum up the evidence or express the slightest opinion as to its bearing and are allowed only to state abstract propositions of law, and where the trial proceeds through the fog of conflicting legal technicalities, raised by counsel, like a ship without a compass, sailing over an ocean through mist, a different rule may prevail. It is the opinion of Judge Speer that a fair trial is promoted in general by the course he has pursued in respect to the matter criticised.

WITH HAVING VIOLATED SECTION 67 OF THE JUDICIAL CODE IN ALLOWING HIS SON-IN-LAW,
MR. A. H. HEYWARD, JR., TO BE APPOINTED
AND EMPLOYED IN DUTIES IN HIS COURT.

Mr. Heyward is a member of the Bar, residing in Macon, Georgia. He began the practice of his profession in July, 1905. He has never been appointed receiver or employed in any duty in the District Court by Judge Speer. He has been appointed receiver in bankruptcy cases by referees in bankruptcy, and has been elected trustee in bankruptcy cases by the creditors. His compensation as receiver, prior to the amendment providing for such compensation on a percentage basis, was invariably fixed on reference to the

referee as Special Master, and in no case where exceptions were filed to the Master's finding did Judge Speer pass upon such exceptions except by consent of counsel.

According to the records in the Clerk's office, during the period from January 1, 1905, to December 15, 1913, eight years, 833 bankruptcy petitions were filed in the Western Division of the District, which includes Macon. During those eight years, as appears from the records, 220 receivers were appointed. Mr. Heyward was appointed by the referee, Mr. Alexander Proudfit, in 20 cases. In 13 of the same cases the creditors elected Mr. Heyward trustee, and he was elected trustee by the creditors in 5 cases in which he had not previously been appointed receiver. Thus he was trustee in 18 cases. During the same period of eight years, according to the same records, trustees were elected by creditors in 822 cases, and as just stated, Mr. Heyward was trustee in 18.

From the list furnished the Committee, it will appear that Mr. Heyward was appointed receiver by Max Isaac, referee, at Brunswick in four cases, in three of which he was also elected trustee by the creditors; that he was appointed receiver once by W. C. Lane, referee at Valdosta, and was elected trustee one time in that the Southwestern Division of the District; and that he was appointed receiver one time by Clayton Jones, referee at Albany, and was elected trustee by creditors one time in that the Albany Division of the District. Thus the total number of cases in the entire Southern District of Georgia during the period of eight years, in which Mr. Heyward acted as receiver or trustee, or in both capacities, was 33. The exact number of cases filed in the District for that period is not available, but must be in the neighborhood of 1,800.

Judge Speer has never suggested or intimated to any referee that Mr. Heyward should be appointed receiver.

The only communication Judge Speer has had with any of the referees, is the following correspondence (Stenographic Record, p. 1302) :

Macon, Ga., July 25th, 1905.

Dear Judge: I write to make this inquiry, should an opportunity occur, would there be any impropriety in my appointing Hasell as custodian or receiver. It would afford me much pleasure to give him some experience in matters of this character. I still have the package I mentioned to you in my office. Don't you need it? It is something extra fine. It will, however, keep. Your friend,

ALEXANDER PROUDFIT.

Honorable Emory Speer, Highland, N. C."

"Highlands, N. C., July 28th, 1905.

My Dear Aleck: With regard to your inquiry as to Hasell, you had best look at the Statute and determine for yourself. I haven't got it here. Certainly it would seem that if a trustee thought proper to employ him as an attorney, he ought not to be debarred of the privilege of earning his livelihood because he is my son-in-law. I, however, have never attempted to control trustees in the selection of counsel, and would certainly not do so in his case. Of course I will be very grateful for anything you can properly do for him. Do not keep that case of whiskey for me, my dear Aleck, "Give strong drink to the perish-ing," says the Proverb. I am yet in the bloom and flower of youth. Love to your sweet wife.

Ever your friend,

EMORY SPEER."

In 1888 Congress passed an Act in the following terms:

"No person related to any justice or judge of any court of the United States, by affinity or consanguinity within the degree of first cousin, shall hereafter be appointed by such court or judge to, or employed by such court or judge in any office or duty in any court of which such justice or judge may be a member."

Act of August 13, 1888,
4 Fed. Stat, *anno*, page 69.

At the time that this Statute was passed the subordinate Federal Courts of Original Jurisdiction were the Circuit Court and the District Court. The Circuit Court could be held either by the Justice of the Supreme Court assigned to

the Circuit or the Circuit Judge, or the District Judge. The Circuit Judge of the Circuit was the Judge of the Circuit Court, and the other judges, that is, the Justice of the Supreme Court assigned to the Circuit, and the District Judge of the District in which the Circuit Court sat, were authorized to preside in the Circuit Court under given circumstances. The Justice of the Supreme Court and the District Judge were not members of the Circuit Court within the meaning of the Statute. The true interpretation to be placed upon the word "member" in the Statute is one of the judges or justices of a given court created and organized with one or more members as component parts constituting and making up the organization of the court.

In 1898 the Court of Bankruptcy came into existence. Under the Bankruptcy Act certain powers and jurisdiction are conferred upon the Judge of the District Court. The Act provides for judicial officers denominated referees. Section 34. The qualifications of referees are fixed in the Act. Section 35. The jurisdiction of referees is also declared in express terms. Section 38. It requires only a cursory view of the provisions of the Bankruptcy Act which relate to referees to see that the referee is given judicial powers of a broad nature, and under given circumstances may exercise some of the same powers which are conferred upon the District Judge, and the referee is not only a judge, but he is the presiding officer of a court of a given and prescribed jurisdiction. It is, therefore, not surprising when we find that the Bankruptcy Act itself declares that the word "courts" shall mean the Court of Bankruptcy, in which the proceedings are pending, and may include the referee. Sec. 1 (7).

Under given circumstances the referee is clothed with the power to appoint a receiver, and the receiver thus appointed is an officer of the referee's court, and derives his authority from the judgment of the referee making the appointment. It is true that the referee holds his appointment under the Judge of the District Court, and by the terms of the Act the Judge of the District Court is prohibited from calling to the office of referee one related to

him within the degree of first cousin. But the referee once appointed becomes himself a judge of a court of the United States and subject to all of the disabilities and limitations placed upon such judges by the Act under consideration. The referee, therefore, cannot appoint a receiver who is related to him within the degree of first cousin, for the reason that he is a judge of a court of the United States, and the Act declares that no judge of any court of the United States can do this. If this view of the matter is not correct and the limitation under the Act upon the referee is to restrain appointments of persons related within the prohibited degree to the Judge of the District Court, then there is nothing in the law which would prevent the referee from appointing his own kinsman within the degree set forth in the Act to any office or duty in his own court. The evil sought to be remedied by the Act would, therefore, still continue so far as this subordinate Federal Court is concerned so long as the referee kept within the letter of the law as so construed and did not call to any office or duty in his court a kinsman of the Judge of the District Court and all of the offices and duties of his court could be performed by his own near kinsmen.

Prior to the abolition of the Circuit Court the Judge of the Circuit Court could appoint to an office or duty in that court a kinsman, within the degree set forth in the Act, of the District Judge, and the District Judge could in like manner appoint in his court a kinsman of the Circuit Judge, or either could appoint a kinsman of the Justice of the Supreme Court of the United States. But the Circuit Judge could not appoint his own kinsman to an office or to the performance of a duty in the Circuit Court. The prohibition in the Act is upon the judge of the court who appoints the officer or calls to the duty, and there is nothing in the letter or the spirit of the Act which prevents the judge of a court of concurrent jurisdiction from appointing a kinsman of the judge of the other court, nor the judge of a subordinate court, like the court of the referee, appointing a kinsman of the District Judge, notwithstanding that in the one instance each judge may exercise the powers of the

other under given conditions, and in the latter instance the referee holds the appointment under the District Judge, and at times exercises powers which the District Judge himself under other conditions would have authority to exercise.

On January 1, 1912, the new Judicial Code went into effect. It is provided therein:

“No person shall be appointed to or employed in any office or duty in any court who is related by affinity or consanguinity within the degree of first cousin to the judge of such court.”

Judicial Code, §67.

While this changes the language of the old law, the purpose of the provision in the Judicial Code is simply to continue of force the rule and principle of existing law, and what has been said in interpretation of the old law applies with equal force to the present law, although some of the illustrations would be inapt, for by the Judicial Code the circuit courts have been abolished. The prohibition in the new law is that no person shall be appointed or employed in any office or duty in any court, etc. The referee's court is a distinct and separate court for certain purposes from the District Court of the district, and the prohibition in the Statute operates upon the referee when he is within the bounds of his jurisdiction. He is the judge of a court created by law, he is the “judge of such court” within the meaning of that expression as it is found in the Statute.

The result of this is that the referee is prohibited from appointing his kinsman within the degree of first cousin, but he was not prohibited from appointing a person otherwise capable, simply for the reason that he was related within the degree of first cousin to the Judge of the District Court. But if he is, the prohibition is directed to the Referee.

Under the Bankruptcy Act trustees are not appointed by the referee or by the judge, except under given circumstances where there is a failure to elect or the like. The

trustee is elected by the creditors, and represents them. The choice of the person to be selected by the creditors as their representative is left under the Statute to the creditors, and the Referee has only authority to disapprove an unwise selection or to make a selection in the event the creditors fail to choose. While the trustee is an officer of the court in a sense and he performs a duty in the court, he is an officer who holds his office not by appointment from the court as a general rule, but by selection of the creditors of the estate, and any time that he may be called to the position of trustee by the referee is exceptional.

According to the evidence, on every occasion on which Mr. Heyward was appointed receiver he was appointed by a referee, and every instance in which he was chosen as trustee he was chosen by the creditors, and therefore he never owed his appointment in one instance, or his selection in the other instance, to any act of the Judge of the District Court.

But, it is said that Judge Speer "permitted his son-in-law" to be appointed receiver by the referees of his court and to be selected trustee in bankruptcy cases.

There is no evidence whatever, not even a suggestion, that Judge Speer ever requested a referee to appoint his son-in-law, or suggested his appointment, or suggested to a referee the propriety of Mr. Heyward being chosen as a trustee by the creditors in a bankruptcy case. On the contrary, the record distinctly shows that Judge Speer never in any way attempted to control or influence the referees appointed by him in the matter of appointments made by them.

It is true that the Judge of the District Court has the power to review the action of the referee in certain matters that come before him. If there had been any objection to the appointment of Mr. Heyward on account of relationship to the Judge, or other reason, objections could have been made to the Referee, and if the Referee, after considering the objection had overruled the same, the Judge would have had power to review such a ruling by the referee and reverse his decision if the appointment was not consid-

ered legal and proper. There is no evidence that any objection was ever made by any one to the appointment of Mr. Heyward. If objection had been made, the matter should have been brought before the Judge on a formal petition for review as in other cases where decisions of the referee is the subject of complaint by persons interested in the cause. It certainly cannot be maintained that any wrong was done by Judge Speer in reference to the election by Mr. Heyward as trustee by the creditors of a bankrupt. He had no control over the creditors or the creditors' meeting. He did not attempt to influence or control the creditors of any bankrupt in the matter of the selection of their trustee, and if at a meeting of the creditors of a bankrupt, Mr. Heyward was duly elected, the charge that Judge Speer permitted the election could not be well made.

To conclude, the tribunal presided over by the Referee is either a court or it is not a court. If it is a court, the prohibition in the Statute in reference to appointments is controlling and the Referee must not appoint his own near kinsman. If it is not a court, within the meaning of this Statute, the Referee can surround himself in all bankruptcy cases with his near relatives in offices and in employment and is safe in this course so long as the person appointed or employed is not related within the degree of first cousin to the Judge of the District Court from whom the referee holds his commission.

THE REFUSAL OF JUDGE SPEER TO ENTER ORDERS
OF *NOLLE PROSEQUI* OF INDICTMENTS FOR
INDICTMENTS FOR VIOLATIONS OF THE
INTERNAL REVENUE LAWS.

Under the Statutes of the United States providing different forms of taxation, under what are commonly known as the Internal Revenue Laws, an occupation tax is laid upon persons engaged in the sale of spirituous and other liquors.

One engaging in such business and having failed to pay the tax required is permitted voluntarily to absolve himself from further liability by paying the tax required with a super added sum as penalty which is fixed in the law.

In order to enforce obedience to and respect for the law, the failure to pay the tax is declared to be a crime and the party violating the law is subject to indictment. So long as the authorities of the Government are in charge of the collection of the revenue and fail to invoke the penal provisions of the law and call into existence the judicial department of the Government, the matter of settlement with persons who have violated the law, is within the absolute control of the Treasury Department, but when the functions of the Judicial Department are called into play, either on the initiative of the Treasury Department or the Department of Justice, or of some citizen who is permitted under the law to institute prosecutions for violations of the law, the matter then becomes one to be dealt with by the courts in accordance with law and the prescribed rules regulating the administration of the law in the courts.

The purpose of appealing to the judicial department of the court in such cases is two-fold, to enforce obedience to the law and to aid in the collection of the revenue which the Government is losing. The latter is merely incidental to the action of the court in impressing upon the people the necessity to obey the law.

When an indictment is preferred and returned, as true, by the Grand Jury, further proceedings under that indictment has to be controlled by the court in accordance with the custom and prescribed rules regulating the administration of justice. The court as a part of the judicial department of the Government is in absolute control of the case. Whether the case shall be pressed to trial, whether it shall be settled, or whether a *nolle prosequi* shall be entered upon the indictment is a matter to be determined by the court in each instance, according to the circumstances of the case. If due obedience and respect to the laws of the land require that the offender shall be brought to punishment under the processes of the court, the fact that the settlement of the

revenue feature of the case has been effected through another department of the Government, is a matter to be considered by the court, but views of that department are not absolutely controlling upon the court in the discharge of the duties which it owes to the public and to the law. The court, in its discretion, after an examination into the facts of the case, has had from time immemorial the authority to direct a *nolle prosequi* to be entered upon an indictment, but this is according to established law and act of the court and to become effective the court itself must enter a judgment to this effect. The court will not be unmindful of the recommendation of the District Attorney, but it is the court that is to determine whether the *nolle prosequi* shall be entered and not the District Attorney, and no order, no matter how formally drawn and deliberately signed by the District Attorney and lodged in the office of the Clerk of the Court, can have the legal effect of stopping the prosecution unless such order has received the sanction of the Judge of the Court in which the indictment is pending. In the cases where Judge Speer has been criticised for refusing to sign the orders of *nolle prosequi* entered on the indictments by the District Attorney, he was of the opinion, as the presiding Judge of the court, and the officer upon whom responsibility for the administration of the law rested, that the due administration of the law of the land did not justify such a course in the cases out of which the criticism arose, and for this reason withheld his consent from this disposition of the indictments.

There was a difference of opinion which existed between Mr. Akerman, the District Attorney, and Judge Speer, as to the respective powers of each over these indictments. The District Attorney contending that as the settlement of the cases was satisfactory to the Treasury Department that this was all that was to be considered and that the Judge was not to be consulted in regard to the disposition of these cases which were pending in his court,—that is that an order of the court as such was not indispensable to the termination of the prosecution. Judge Speer contended, however, in furtherance of his views, that the cases should not

be disposed of in this way, that he had the power to hold the cases open on the docket of the court until an appropriate order was passed by him as Judge of the court disposing of the same. It would certainly be a withdrawal of power from the court and a diminution of the dignity and the prestige of the court if the District Attorney, a mere subordinate officer of the court, would have the right, by lodging in the Clerk's office, a paper to dispose of a pending prosecution in a manner inconsistent with the views of the presiding Judge of the court which the law had given jurisdiction of the case. It is not deemed inappropriate at this point to call attention to a matter of public notoriety which has transpired in the last few days in regard to these cases over which the difference between the Judge and the District Attorney arose:

On Wednesday, the 11th day of the present month (February), while the District Court of the Southern District of Georgia was in session at Valdosta, Judge Sheppard presiding, Mr. Akerman, the District Attorney, presented to Judge Sheppard orders of *nolle prosequi* in all of the cases referred to, and asked that such orders be signed by the presiding Judge, which was done. This action on the part of the District Attorney was a complete surrender by him of the views which he has heretofore entertained. It is an admission that the action of the court is indispensable to the termination of the prosecution, and Judge Sheppard in signing the orders of *nolle prosequi* demonstrated his concurrence in the views which Judge Speer had entertained as to the power and authority of the court, although in the act of entering and authorizing the orders of *nolle prosequi*, he may have entertained different views from Judge Speer as to the propriety of a further prosecution in the cases.

THE BEACH, CARTER AND GRAY CASES.

The action of Judge Speer in these bankruptcy cases was criticised by W. W. Lambdin, John W. Bennett, V. E. Padgett and Jacob Gazan, attorneys for the alleged bankrupts.

The firm of Isaac & Heyward was associated with other attorneys for the petitioning creditors in each of these cases. The petition against the Beach Manufacturing Company was filed on March 13, 1913, the one against the Gray Lumber Co. was filed April 22, 1913, and the one against the L. Carter Company on May 2, 1913.

Mr. Lambdin testifies (Stenographic Record, pp. 2254-5) : "The filing of these three cases, which involved large property interests, rather sent a shock into the entire commercial world of South Georgia * * * the impression went abroad that this particular firm had the ear of Judge Speer * * * there was a general feeling of uneasiness and unrest. Nobody felt safe."

It is evident that the commercial world did not know of the admitted financial condition of these corporations at the time the bankruptcy petitions were filed, otherwise there might have been no "shock."

The Gray Lumber Company had made a deed of assignment to seven trustees for the benefit of creditors, and the trustees had taken possession of all its assets. This was a public and notorious act and was certainly known to that considerable part of the commercial world having dealings with that company.

The L. Carter Company, of Odum, Ga., a corporation with a capital stock of \$100,000, doing a mercantile business and conducting farming operations, had by a number of deeds, executed about the same time, conveyed to L. Carter, its president and chief owner, all the real estate it possessed, including the lot upon which its storehouse was situated, to secure an alleged indebtedness of L. Carter of more than \$50,000, the value of the real estate conveyed to him being over \$50,000. The public was constructively put on notice of this transfer because the deeds had been on record nearly four months when the bankruptcy petition was filed.

The Beach Banufacturing Company had been threatened with bankruptcy a year before, but the petition had been dismissed. At the time the second petition was filed in March, 1913, its chief asset a large body of timber lands in Florida had been sold for taxes and the three-year period

during which it could be redeemed had almost elapsed, it had defaulted on its mortgage indebtedness, \$40,000 of judgments had been obtained against it and appeared on the judgment dockets of Appling County, and its laborers had declined to work unless paid each night for the day's work.

Mr. Rolling Whitfield, during his testimony before the Committee, was asked as to the solvency of the above corporations at time of bankruptcy petitions were filed, and replied (p. 2031): "My own opinion is that with the possible exception of the Carter Company, none of them were solvent."

BEACH CASE.

On March 31, 1913, an involuntary petition in bankruptcy against the Beach Manufacturing Company was filed by certain creditors represented by John S. Walker, an attorney of Waycross, Ga., who, Mr. Lambdin testifies, "Is a man of good character and high standing in the Bar" (page 2279), and the firm of Isaac & Heyward having an office at Brunswick, where a short time prior thereto Isaac had been referee in bankruptcy for a number of years, and having an office at Macon, where Mr. Heyward resided.

An application was made at the same time by petitioning creditors for the appointment of a temporary receiver. The bankruptcy application set forth that one of the acts of bankruptcy alleged, was the payment of the Beach Manufacturing Company, while insolvent, of the sum of \$350 to Messrs. Wilson, Bennett & Lambdin, as a partial payment of a fee claimed by them for representing the Beach Company in a bankruptcy proceeding brought against it about a year before, but which was subsequently dismissed.

The Beach Company owned a large body of land in Florida which, however, had been sold for taxes and the time within which it might be redeemed was to expire within a few months. It owned a plantation and some timber lands in Camden County, Ga., and a large saw-mill at New

Lacey in Appling County, Ga. At the time of the filing of the petition it had ceased regular operation of its saw-mill, had failed to supply its commissary, and its laborers had refused to work unless paid each night for the day's work. The company was indebted to them several thousand dollars for wages. Fifty mules were without food, although feedstuff was in the depot, on which the company was not able to pay freight and take out. Mr. Lambdin testifies (Rec., p. 2298), that there were forty or fifty judgments outstanding against the Beach Company, a large number of suits pending against it in the state court, that it had defaulted on the issue of one hundred and seventy thousand dollars of bonds, but that the thirty days' grace allowed by the mortgage had not expired. Its indebtedness, outside of its mortgage indebtedness, was in the neighborhood of one hundred thousand dollars. An application had previously been made about a year before for the application of a receiver and for adjudication in bankruptcy, but the proceedings were dismissed largely because one of the three petitioning creditors had withdrawn from the proceeding, and a large percentage of the creditors had intervened asking that a receiver be not appointed.

Judge Speer, on the application for the appointment of a temporary receiver, granted an order *ex parte*, appointing R. L. Moss, who operated a saw-mill in Clinch County, as receiver. This was done under the provision of the bankruptcy law, authorizing such appointments, "upon the application of parties in interest, in case the courts shall find it absolutely necessary for the preservation of the estates." (Sec. 2 (3) Bankruptcy Act, 1898.)

The application for receiver containing the necessary allegations was properly verified. The receiver was appointed for the purpose of preserving the assets of the Beach Company. It is difficult to imagine how the appointment could have injured the defendant in any way. It apparently had no commercial credit, as even the laborers would not extend it credit except for a day at a time.

Shortly after the appointment of a receiver, a motion was made to dissolve the receivership, and a hearing was had on

that motion on April 3rd. Before the hearing was had, Mr. Leon A. Wilson, one of the attorneys for the company, called on Judge Speer in his office, stating that he had come at the instance of all of the counsel for the defendant, to ask a delay of the hearing for thirty minutes in order that a conference might be had with the attorneys for the petitioning creditors, with a view of an amicable settlement of the litigation, which might prevent the necessity of a hearing on the motion to discharge the receiver. Mr. L. A. Wilson was present in Savannah when his law partners, Messrs. Bennett and Lambdin, testified, but Mr. Wilson was not called as a witness before the Committee. The request of Mr. Wilson was granted, but no adjustment being made the case proceeded. Mr. Beach, and perhaps several others, were sworn. After the taking of testimony had continued for about a day and a half, again at the request of Mr. Wilson, an opportunity was given for the attorneys of the defendant to have a conference. Soon thereafter, Mr. Wilson came into the court-room and made the following statement to Judge Speer (Stenographic Record, page 2303) :

Mr. Wilson: "I asked your Honor a few minutes ago to suspend and give us an opportunity to confer with our client with reference to giving a certain direction to this case, which I now want to be given. We have decided, your Honor, to withdraw the application for the discharge of the receiver, and feel satisfied that with your Honor's supervision over the receiver, that the rights of the parties in this matter will be protected. Now, if it is necessary for us to consent more fully to the granting of the Receiver's certificates to obtain means with which to pay the insurance and take care of the mules that are absolutely necessary at this time, it is our purpose now to tender your Honor an order withdrawing the application. In doing this we would like to ask if your Honor would be willing to hear testimony as to the condition of the Florida property in order that your Honor may be able to give directions to that matter."

The Court: "I will be glad to hear that. Prepare the order, gentlemen, and incorporate in the order a provision

about the consent of the bankrupt to the issuance of the receiver's certificates."

An order was prepared and presented to the Judge, and appears in full on page 2267 of the stenographic record. The words "by consent" appear at the foot of the order.

This was understood to be a consent order, that is to say, that by withdrawing the motion to discharge the receiver, the Beach Company thereby consented to the continuance of the receivership. The order was not prepared by Judge Speer, but was presented to him by some of the counsel. He does not now remember what counsel of the Beach Company were actually present at the time the order was signed, but Messrs. C. G. Edwards, V. E. Padgett, L. A. Wilson, W. W. Lambdin and J. N. Talley were present at the hearing and in view of the diligence and activity of those gentlemen, it would be a little surprising if one or more of them were not present when the order was presented to the Judge, this being done immediately after the hearing was concluded. The order in question was immediately put with the record in the case where it had remained since that time, and was at once entered on the minutes of the court in Savannah. No question seems to have been made about the order until after the Beach Company had been adjudged not bankrupt by a jury in September, 1913, when on the question of taxing costs it was deemed important by the attorneys for the company to resist the taxing of any of the costs and expenses of the receivership against the Beach Company, on the ground that it had not by consent or acquiescence, permitted its property to be taken charge of by a receiver. The point was then raised that the words "by consent" were not in the order at the time it was signed by Judge Speer. Mr. Padgett is the only one of the numerous counsel in the case who makes this assertion. Mr. Lambdin, it seems, had not examined the order until September. Mr. Wilson, as heretofore stated, was not examined before the Committee.

Judge Speer respectfully submits that the action of the Beach Company in withdrawing its motion to vacate the receivership, in effect consented to the continuance of the re-

ceiver and that the words "by consent" in the order are really irrelevant. He further submits that it must have been stated to him at the time the order was presented that it met the approval of the attorneys for the defendant. Judge Speer submits that the words "by consent" were placed in the order at the time it was signed, and that it was in effect a consent order. It will be observed that the consent order complained of first recites that the motion to dismiss the receivership had been filed, and had come on to be heard, and that evidence had been partially taken, and that the alleged bankrupt had voluntarily dismissed the motion to discharge the receiver, it was thereupon ordered that the order appointing R. L. Moss be confirmed and that he be appointed permanent receiver to hold and retain the assets until the further order of the court, that the receiver be authorized to conduct the business of the bankrupt as a going concern, and by consent of all parties, to issue receiver's certificates in the sum of one thousand dollars, and to make semi-monthly reports. This was the order which naturally followed the direction given by the attorneys for the Beach Company to the motion to discharge the receiver.

On April 4, 1912, the attorneys for the Beach Company called attention to the fact that it had a few days before the filing of the petition in bankruptcy made a contract for the sale of its Florida timber land for one hundred and sixty-five thousand dollars, payable in installments extending over five years, and the court was asked to authorize the receiver to confirm and carry out the sale. This contract had not been turned over to the receiver by the Beach Company and the attorneys for the creditors desired to investigate the sale and time was given for that purpose. Later, the matter was brought up before Judge Speer two or three times, but the attorney for the receiver objected to the confirmation of the sale because the receiver was only authorized to preserve the assets, and in case of adjudication, the title would vest in the trustee and a serious complication might arise from that fact, also because the sale having been made a few days before bankruptcy, the element of pref-

erence might enter into it, and further because the time of payment extended over five years and might not be deemed by the trustee advantageous to the estate, particularly if it should be discovered that the Florida Timber Products Company was not entirely solvent. As a matter of fact, since that time the purchaser has been adjudged bankrupt in Florida, as will appear from the evidence before this Committee.

Judge Speer, in June or July, passed an order stating that the confirmation of this sale would be postponed until the trial of the main case could be had at Savannah.

The Beach Company filed an answer denying insolvency and demanding a trial by jury. This case was pending in the Savannah Division of the District and could not be tried at Macon before a jury except by consent of both parties. In July, Judge Speer wrote to Judge Pardee, the senior Circuit Judge, asking that another Judge be designated to try this case on the question of bankruptcy or no bankruptcy, and Judge Newman, of the Northern District of Georgia, was so designated, and on the trial of the case in Savannah, in September, a verdict was returned in favor of the Beach Company.

In the meantime, after Judge Speer had gone to his summer home at Mt. Airy, in August, 1913, Mr. V. E. Padgett and Mr. J. N. Talley presented to him a petition in behalf of the Beach Manufacturing Company, asking that the receiver be directed not to cut the timber in Camden County. The Beach Company having invoked the jurisdiction of Judge Speer, he felt at liberty to grant a *rule nisi*, returnable two days thereafter. At the time of presenting this petition to Judge Speer, said attorneys knew that Judge Newman had been designated to try said case, for on the afternoon of the same day they left for Asheville, N. C., where they, with Mr. John W. Bennett, another attorney for the Beach Company, and Mr. George S. Jones, an attorney for the trustee of the bond holders of the Beach Company, had a conference on the following day for the purpose of having the case assigned for trial at Savannah. While there, it appears some discussion was had as to how far Judge New-

man's designation extended, and Judge Newman wrote a letter addressed to Judge Speer, which is in the record. On the day following this conference, the above named attorneys returned to Mount Airy, and Mr. Jones presented this letter to Judge Speer, and it was suggested that Judge Speer was perhaps disqualified to pass on the petition which had been presented to him by Mr. Padgett and Mr. Talley. Judge Speer then replied that he would wash his hands of the entire matter, his remarks being filed with the record as an opinion, and read into the record before the Committee by Mr. Bennett.

Mr. Bennett, at some length, described the conduct of Judge Speer in making these remarks, and perhaps created the impression that he thought Judge Speer was mad because this course had been taken by counsel after they had invoked an order from him. After Judge Speer declined to pass on the petition it became necessary to go back to see Judge Newman and ask him to pass on it, and Mr. Bennett was chosen for that purpose. Mr. Bennett then wished to obtain an order or letter from Judge Speer indicating to Judge Newman that he did not care to pass on the petition.

Mr. Bennett in his testimony on page 2433, describes this effort as follows:

"I said: 'Gentlemen, I will go to Judge Speer,' and one of the gentlemen says, 'he is mad as—and will put you in hell—I mean put you in jail, if you go to him,' he said he was as mad as—and will put you in jail if you go there.' I says, 'I will have to see the Judge before I go back to see Judge Newman.' "

It seems, however, that Mr. Beach's fears were groundless, for that gentleman continues:

"I started to Judge Speer's home at Mount Airy, but I met him near the depot. He received me cordially, and asked me about some of my Waycross friends and his friends. And after talking a few minutes, the Judge said, 'I will direct my stenographer to give you a copy of the official opinion I have rendered and the original bill will be filed in Savannah.' I thanked the Judge and left him."

In conclusion, it may be remarked that immediately after

the jury in Savannah returned a verdict finding the Beach Company solvent, a receiver was appointed at once by Judge Newman at the instance of the Union Trust Company, trustee for bond holders, for the purpose of preserving the assets of that company for the protection of the bonds of the company. In other words, after hearing all the evidence in the case, Judge Newman deemed it necessary to appoint a receiver to prevent loss to the bond holders, although the jury had returned a verdict that the company was solvent, and although the evidence was practically undisputed that it owed practically one hundred thousand dollars in addition to its bonded indebtedness.

This receiver is still in charge of the property and has been since September, 1913.

THE L. CARTER COMPANY CASE.

W. J. Broadhurst and other creditors, on May 9, 1913, filed a petition in bankruptcy against the L. Carter Company, the act of bankruptcy being the transfer made by that company to L. Carter of all its real estate holdings of the value of \$51,000, this it was alleged, was done to prefer L. Carter over other creditors, and to hinder, delay and defraud creditors. These conveyances had bee recorded in the Clerk's office of the County, and lacked two or three days of being four months old at the time the bankruptcy petition was filed. After four months such conveyances could not be attacked.

On the filing of this petition, on the application of the creditors, Judge Speer granted an order requiring the company to show cause on the 23rd why a receiver should not be appointed, and restrained the company from changing the status of its property and from putting any liens or incumbrances on the real estate conveyed to Carter, its president. On the same day, however, Judge Speer appointed Henry G. Tucker custodian, and directed him to take possession of the books and records of the company.

On the following day, May 10, 1913, Mr. Lambdin, at-

torney for Carter Company, called on Judge Speer and stated as follows (Stenographic Record, p. 23183: "I made formal application to Judge Speer setting up that this was not a *bona fide* petition, that they did not owe the debts, and asked the privilege of giving bond, I urged that the attorneys for the petitioning creditors should not be permitted to take our books and find out the names of others to bolster up their petition with, and I asked Judge Speer to modify his order and have the receiver take charge of the books and accounts and seal them up and not let anybody see them, and Judge Speer granted the order."

It will be thus seen that Judge Speer granted fully the request of Mr. Lambdin, and if there had been any disposition on the part of the attorneys for the petitioning creditors, Messrs. J. R. Thomas, J. A. Morris and Isaac & Heyward, to examine the books of Carter for the purpose of "bolstering up their petition," Judge Speer's direction to seal up the books successfully prevented them from doing so.

The case came on for hearing before Judge Speer on June 12, on the question of the appointment of a receiver.

Mr. W. J. Broadhurst, one of the petitioning creditors, was present, as was J. R. Thomas and Max Isaac, attorneys for petitioning creditors. Mr. Lambdin had some paper in his hand when the case was called, and a short conversation was had by him with Mr. Thomas. Mr. Lambdin then stated to the Judge that he had an application from Mr. Broadhurst stating in effect that his name as a petitioning creditors had been used by Mr. Thomas without authority. Judge Speer stated that such a motion would naturally come from Mr. Broadhurst or his attorney, Mr. Thomas, both of whom were in court, and not from the attorneys for the opposite party.

The answer of the Carter Company was then read, and on motion of petitioning creditors, represented on the record by J. R. Thomas and Max Isaac, Judge Speer struck a portion of the answer alleging on information and belief that the names of Broadhurst as a petitioning creditors had been used without his authority, on the ground that the petition was signed by J. R. Thomas and Max Isaac, who pur-

ported to represent Broadhurst, and that he was bound to presume that they were so authorized, that the indirect attack on counsel for plaintiff by the answer of the defendant was improper. Evidence was submitted, and Broadhurst, one of the petitioning creditors, was sworn as a witness and testified as to the indebtedness due him by the L. Carter Co.

On the following morning, at the motion hour, Mr. R. L. Bennett arose and stated he had a motion to strike the name of Broadhurst as a petitioning creditor. As the hearing in the Carter case was to be continued, as soon as counsel present had submitted their motions, in other cases, Judge Speer told him to file his motion with the Clerk, and it would be taken up later, meaning when the hearing on the Carter case was resumed. The hearing was resumed, and in a short while Judge Speer stated that he would decline to appoint a receiver, saying:

"The proceeding here is based, it is true, upon a very small margin of the claims of creditors to support the proceedings in bankruptcy, but if that margin is sufficient, notwithstanding the poverty of the claims the court has no right to exclude these small creditors from the privileges and the benefits of the act, but here the demand is more,—it is, that the court will take all of this property away from the hands of the debtor, the alleged bankrupt, and put it in the hands of a receiver. To justify that the equity of the plaintiff must be complete. It not only must be complete, but it must be very strong. The court does not think that it is sufficiently strong in this case to justify the appointment of a receiver, but what may develop further in the case I can not anticipate, further creditors may come in to give it jurisdiction, there may be enough to give jurisdiction now, that, as I said, is not up at this time, that is not the question to be decided. I am informed that the bankrupt has demanded a jury trial, if so, the jury must pass upon it,—that being true, the case not being sufficiently strong in my opinion to justify the appointment of a receiver, it is declined, the application is declined."

At the conclusion of the hearing, Mr. Isaac stated that he desired to present a petition to the court asking for an in-

junction restraining L. Carter from disposing of or transferring the real estate conveyed to him pending the final hearing before a jury on the bankruptcy petition. This was denied, Judge Speer stating that the pendency of the bankruptcy case would probably be effective as a *lis pendens* to prevent such transfers if they were contemplated by Mr. Carter. Mr. Isaac then moved that the books and records of the L. Carter Company be impounded until the final hearing. The fifteen deeds made by L. Carter Company to L. Carter had been tendered in evidence and filed with the Clerk during the progress of the hearing on the day before. Judge Speer then remarked, "I will direct that all this evidence be impounded and remain so until this case is finally disposed of." This remark of the Judge evidently referred to the deeds in evidence. Mr. Lambdin, probably misunderstanding the ruling of the Judge, said, "We think this is not a case where the books of the company would be impounded," giving his reasons therefor. Mr. Wilson followed on the same line.

Judge Speer adhered to his ruling that the deeds already in evidence should remain with the Clerk until the final hearing of the case. This is the usual practice in such cases, unless copies are substituted for originals by consent, indeed there is a rule of court requiring title deeds to be used in evidence to be deposited with the Clerk.

Judge Speer did not preside on the trial of the case on its merits. On motion of the attorneys for petitioning creditors the case was dismissed in September by Judge Newman.

THE GRAY LUMBER CASE.

In this case, the attorneys for the petitioning creditors were McDonald & Willingham, Osteen & Wallace, of Douglas, and Isaac & Heyward. An involuntary petition was filed April 22, 1913. The business of this company was located in Coffee County. Mr. Lambdin, who criticised this case, testified (Record, p. 2273) : "They owed debts to the

amount of about \$150,000. Mr. Gray became financially embarrassed, could not pay his debts when due and he called a meeting of his creditors. They finally came to an agreement which was printed and the substance of the agreement was that the creditors agreed to give an extension of four years to the Gray Lumber Company, 25 per cent. to be paid on the first of January of each year, and a committee composed of B. B. Gray and six others (naming them), were constituted a committee of creditors to take charge of the business, and they did take charge of the business, and several of the non-consenting creditors filed a petition in bankruptcy." This transfer was attacked by the bankruptcy petition as an assignment for the benefit of creditors, and constituted an act of bankruptcy.

An application was made for the appointment of a receiver, and Judge Speer issued a rule requiring the defendant to show cause why one should not be appointed. A few days before the hearing a petition was filed setting up that days before the hearing a petition was filed setting up that the valuable saw-mill property was not protected by insurance, and the bankrupt, through his attorney, Mr. Lankford, consented to the appointment of a receiver for the purpose of effecting insurance. Mr. Gray, the president of the company, and a trustee under the alleged assignment, was appointed receiver for that purpose. Mr. Lambdin's complaint here is (p. 2278) that Mr. Gray and his counsel went to Macon "and a trade was made with the attorneys for the petitioning creditors whereby Mr. Gray consented for the appointment of a receiver and he (Judge Speer) thereupon appointed a receiver in advance of the hearing."

It does not appear, however, that Judge Speer was a party to any such "trade," but on the contrary, it must be presumed that he acted on the petition presented to him which justified and demanded this action on his part.

The hearing was had on the application for receiver, on the day set for the hearing, and Judge Speer appointed B. B. Gray and W. T. Anderson, receivers. This was done after counsel were asked if they could not "agree on the personnel

of the receivers, and being informed that they could not agree." (Rec., p. 285.)

This petition for adjudication was returnable to the Valdosta Division, and is being resisted by some of the trustees under the alleged assignment. It was assigned before Judge Newman at Savannah, but was postponed and was referred to the Referee as Special Master by Judge Sheppard at the present session of the court at Valdosta.

THE YARYAN CASE.

This case has been referred to incidentally by several of the witnesses before the Committee. It was an equity case, the bill being filed by a creditor, and receivers appointed by Judge Speer by consent of the defendant, the latter filing an answer admitting the allegations of the bill. The final hearing on this case was had before Judge Sheppard of the Northern District of Florida.

CONDUCT OF JUDGE SPEER IN CASES IN WHICH HIS SON-IN-LAW HAD A CONTINGENT FEE.

Judge Speer has not presided in any cases in which he knew Mr. Heyward had a contingent fee.

A list of the ciivil and bankruptcy cases in the United States Court, in which Talley & Heyward appeared of counsel has been furnished by Mr. Talley to the Committee. A reference to that list will show that they were not of counsel for petitioning creditors in any contested bankruptcy case, even if such cases may be regarded as contingent fee cases, as contended by Mr. Alexander Akerman. It will also appear that Judge Speer did not fix the fees of Talley & Heyward, where such fees were required to be fixed by the court, but that uniformly their applications for fees were referred to a special master, and fees fixed by special master, and no exceptions filed by any party at interest, and that

in case of exceptions as in the bankruptcy case of the Dublin Cooperage Company, Judge Speer disqualified. In the latter case, there appears in the record a waiver of such disqualification signed by all parties interested.

It appears from the testimony of Mr. Meldrim (p. 1680), that he understood Talley & Heyward had a contingent fee in the case of Watson vs. Hester, damage suit for false imprisonment.

Mr. Meldrim was asked, "You knew before the case was tried that they had a contingent fee?" He replied, "Only from Talley, sir." Mr. Callaway: "And you did not call that to the attention of the court?" Mr. Meldrim: "No, sir, but I make no complaint about that at all." Mr. Callaway: "If you did complain of it, it would have been your duty to call it to the attention of the court." Mr. Meldrim: "Yes, sir."

A reference to the list of cases in which Talley & Heyward were interested will disclose the fact that they rarely appeared in damage suits or other cases of like character where attorneys often receive fees based on the amount of the recovery, and from the list it will be seen that according to the statement furnished the Committee, they had a fixed or agreed upon fee, in every such case, except possibly the case of Memminger vs. Postal Telegraph Co., where it does not appear what their contract was. In this case Talley & Heyward and John R. L. Smith represented the plaintiff, obtained a judgment of \$1,500 which was sustained by the Circuit Court of Appeals. The case of Watson vs. Hester has been referred to by Mr. Meldrim as above. From the list furnished the Committee it does not appear what fee these attorneys had in the cases of Northrop vs. Clements, and Northrop vs. Troup, ejectment, where they represented the plaintiff. As Judge Speer directed verdicts for the defendants in these cases, it can hardly be said that he showed favoritism to Talley & Heyward, particularly as both decisions have been reversed by the Circuit Court of Appeals. It is, however, true as stated in the outset, Judge Speer has never knowingly presided in any case

where it was brought to his attention that his son-in-law, Mr. Heyward, had a contingent fee.

But it is said by Mr. Lambdin and Mr. Alexander Akerman, in their testimony before the Committee, that Messrs. Isaac & Heyward, who were associated with other counsel in the three bankruptcy cases of the Beach Manufacturing Company, The L. Carter Company and the Gray Lumber Company, might have had a contingent fee in those cases, if they were successful in having those companies, or any one of them, adjudged bankrupt; that under the Bankruptcy Act (Sec. 64-b-3), which provides for the payment of debts having priority, including cost of administration "and one reasonable attorney's fee, for the professional services actually rendered to the petitioning creditors in involuntary bankruptcy cases." The theory on which this compensation is provided for by the statute is that the attorneys for the moving creditors may incidentally render services beneficial to the other creditors in the case. The statute does not provide that such attorneys have any specified interest in the result of the litigation, their fees are to be fixed by the court after their services are rendered, and must be based on the actual services rendered by such attorneys. The only theory upon which this class of cases can be in any way classed as contingent fee cases, is that the greater the success achieved for all creditors, the greater the compensation to which they may be entitled.

It is true, however, that Judge Speer passed on none of the controlling issues in those cases. The defendant, in each case, filed a denial of bankruptcy and Judge Speer passed on that issue in none of the cases referred to.

The only orders made by him were in the nature of protective orders preserving the status until the hearing on the merits of the petition could be had.

In the Beach case he appointed a temporary receiver, who under the bankruptcy law is a mere custodian for the preservation of the assets. A motion was made to dissolve this receivership, but was subsequently withdrawn and the defendant thereby consented to the propriety of the order. An application having been made to Judge Speer by the

Beach Manufacturing Co. to approve the sale made by it of certain timber land, Judge Speer passed an order postponing action on that petition until the bankruptcy petition on its merits could be heard. The Beach Manufacturing Company, through its attorneys, also presented to Judge Speer a petition to restrain the receiver from cutting certain timber. Judge Speer issued a *rule nisi*, but the hearing thereon was had before Judge Newman. If Judge Speer was disqualified, as contended by Mr. Lambdin, for the Beach Company, and if Judge Speer should have known from the character of the case that his son-in-law, Mr. Heyward, Jr., might have a fee dependent on the result, such knowledge must have been possessed by Mr. Lambdin, and the other attorneys for the Beach Company, and it was as much incumbent on them to make the suggestion to Judge Speer as it was for the Judge to discover such fact and voluntarily disqualify. Judge Speer had the right to assume if any disqualification existed, that the point was waived by said attorneys. Particularly would this seem to be true when Padgett and Talley, attorneys for Beach, presented the petition to Judge Speer after he had disqualified in the main case and after they knew that Judge Newman had been designated in his stead.

The order passed by Judge Speer in the Carter case was also merely preliminary. There the Judge appointed a custodian to take charge of the books and accounts of the L. Carter Company and on the following day, at the instance of the Company, modified the order by directing that the books be sealed up so that no one could examine their contents, and on the hearing the Judge dismissed this custodian. The bankruptcy case was afterwards dismissed by Judge Newman.

In the case of the Gray Lumber Company, Judge Speer issued a *rule nisi*, later appointing a receiver only to effect insurance and on the hearing on the *rule nisi* appointed receivers to preserve the property until the trial could be had of the issue of bankruptcy or no bankruptcy. This last issue has never been tried before Judge Speer.

Mr. Lambdin, a witness who appeared before the Com-

mittee, was counsel for the alleged bankrupts in all of these cases, and never at any time suggested to Judge Speer that in his opinion it was improper for Judge Speer to pass any of the orders named, or to preside in cases of this character where Mr. Heyward had an interest as an attorney at law.

Mr. Lambdin says (Stenographic Record, p. 2266) :

"In the State courts . . . in my practice in the State courts, and in other courts, you merely have to suggest that one of the attorneys is related to the Judge, and that he has a contingent fee, and if the mere suggestion is made, the Judge voluntarily, without any request, is too glad to disqualify himself."

It is true, however, that Mr. Lambdin never at any time made any such suggestion to Judge Speer. It is also true, that in the courts of the State, provision is made for one Judge to act for another in cases of disqualification, and usually very little delay will result because another judge can usually be found in a few hours' time. This is not true with the District Court Judge of the United States. Here in case of disqualification, application must be made to a Senior Circuit Judge for the designation of another District Judge, which District Judge may be at a distant point in another state, and if the opinions of some of the lawyers who have testified before this Committee are correct, such designated judge would be compelled to visit the Southern District of Georgia in order to pass the order sought. Such delays might work irreparable injury in urgent cases, where immediate relief is essential. It would therefore appear to be the duty of the Judge who was not plainly disqualified, or if such disqualification was waived by acquiescence or otherwise, or in case where there would be a failure of justice, to pass such preliminary and protective orders as might be necessary to preserve the status of the cases until the controlling issues therein could be tried before another judge.

The principle that a man may not be a judge in his own cause is of universal acceptance and has been established since the earliest periods of the common law. Lord Coke

once said that even the transcendent power of the English Parliament was not sufficient to make a man a judge in his own case. However, at common law a judge was not disqualified to preside in cases where he was related to the parties, nor in cases where he had been of counsel prior to the time of his being called to the office of judge. This rule was based upon the idea that prejudice will not be presumed in a judge and no challenge will be allowed against a judge for favor. In such cases, however, it was permissible for the judge to retire from the case of his own motion, and this action has received commendation at the hands of judges in different jurisdictions. While there is no express disqualification declared by law, Congress has declared:

“Whenever it appears that the Judge of any district court is in any way concerned in interest in any suit pending therein, or has been of counsel for either party as to render it improper in his opinion for him to sit on the trial, it shall be his duty on the application of either party to cause the fact to be entered on the records of the court.”

and the procedure then to be followed in order to obtain the services of another judge are set forth in the Act.

Revised Statutes, 601.

The provision is applicable where the judge has a pecuniary interest in the cause, or where he is related to a person who is an actual party to the record, or where he has been of counsel in the same cause or in the controversy out of which it arose. It is to be noted that even under this Statute, the judge presiding under circumstances referred to in the Statute is classed as an impropriety and not an absolute ground of disqualification,—that is except where he has himself a pecuniary interest. The matter of the propriety of his presiding in the cause is left to his determination. There is in the Statute a remnant of the principle of the common law above referred to that a Judge cannot be challenged for favor and that there are questions of pro-

priety which one occupying the position of a judge must decide for himself.

In some jurisdictions statutes have been passed absolutely disqualifying a judge from presiding in a given character of cases. There is a statute of the State of Georgia which declares:

“No judge or justice of any court * * * can sit in any cause or proceeding in which he is pecuniarily interested or related to either party within the fourth degree of consanguinity or affinity, nor of which he has been of counsel, nor in which he has presided in any inferior judicature when his ruling or decision is the subject of review, without the consent of all parties at interest; provided, that in all cases in which the presiding judge of the Superior Court may have been of counsel before his appointment as judge, he shall preside in such cases if the opposite party or counsel agree in writing that he may preside, unless the judge declines so to do.”

Civil Code of Ga. (1910), 462.

The word “party” in this statute has been held by the Supreme Court of Georgia to be sufficiently broad to include an attorney for a party, who has by contract an interest in the proceeds of the judgment that might be rendered in the case, and that a judge who is related to such an attorney within the prohibited degree would be a disqualified judge under the Statute.

While this Statute of the State of Georgia is of course not binding even upon the Judge of a Federal Court presiding within the territory of the State of Georgia, it is referred to simply as the rule of the State court prevailing in the territory where the Federal court is located over which Judge Speer presides. The criticism which has been made upon the Judge is one that has its origin probably in the existence of this State Statute relating to the matter which is the basis of the criticism. There is some difference of opinion as to whether the judgment of a disqualified judge is void or voidable, but the better view seems to be that

unless there is a Statute declaring such act to be void the judgment is only voidable. Even in cases where there is a Statute prescribing definite grounds of disqualification, a judge so disqualified by operation of the Statute may make valid orders of a certain character in a cause. If there is no provision made in the law for another judge to preside, even a disqualified judge may act in a cause in order that there may not be a failure of justice. Growing out of this well recognized principle it has been held that a disqualified judge can without impropriety pass formal orders in a cause in which he is actually disqualified. It has also been held that the fact of disqualification would not prevent the Judge from passing a *preliminary order, more than formal in its nature*, in order that injustice might not result from the delay required for presentation of the matter to a qualified judge.

American & English Encyclopedia of Law, 2 Ed.
Vol. 17, page 744.

Chase vs. Western, 75 Iowa, 159.

The criticism is made that Judge Speer passed orders in bankruptcy cases appointing receivers or custodians prior to adjudication in cases where his son-in-law was of counsel for moving creditors. It is said that the compensation which is to be paid to counsel for the moving creditors in a bankruptcy case is contingent upon the fact of adjudication, and therefore such counsel has a contingent fee within the usual meaning of that term, and a Judge who is nearly related to such counsel would be disqualified to act in any way in the cause. This construction would disqualify the kinsman of a judge for acting for the defendant in a bankruptcy case also, for the court must fix a fee for the defendant's attorney. It follows then that a relative of a judge could not practice at all in bankruptcy cases. This shows the absurdity of the contention. If such compensation is to be properly characterized as a contingent fee, then under the Statutes of Georgia a State Judge would be disqualified in a similar case, but there is no Federal Statute

which would disqualify a judge in a case of that character. The ruling of the Supreme Court of Georgia extending the meaning of the word "party" in the Statute declaring in what cases a judge should be disqualified is based upon the theory that the attorney by virtue of a contractual relation with his client or by operation of law, growing out of his relationship to the case, becomes a *quasi* party,— just as in any case where one not a party to the record is shown to be the person who would receive the proceeds of the recovery. Whether counsel for moving creditors in a bankruptcy proceeding whose compensation is to be determined during the progress of the case and dependent upon the fact of adjudication is a *quasi* party to the cause might admit of serious debate, but so far as the action of Judge Speer is concerned it is immaterial, for it appears from the evidence that he has never passed upon the question of adjudication in any bankruptcy case where his son-in-law was of counsel for the moving creditors, nor has he ever fixed directly or indirectly any fee or compensation for his son-in-law as counsel for the moving creditors in a bankruptcy case. Wherever the record discloses that he has acted in any of such cases, the order passed has either been of a formal nature, or where it might be declared to be more than formal, it was an order passed in the preliminary stage of the case for the purpose of preserving the estate in order that the question involved therein might be thereafter passed upon by a referee or a judge about whose qualification to act there could be no question. When a petition for adjudication in involuntary bankruptcy is filed the court of bankruptcy acquires jurisdiction of the estate of the alleged bankrupt sufficient to authorize the court by appropriate orders to preserve the estate for the benefit of creditors, if the person against whom the proceeding is instituted is ultimately adjudged a bankrupt or for return to such person if the bankruptcy proceedings fail or be discontinued. The court may appoint either a receiver or a custodian and where a receiver is appointed for the purpose only of preserving the estate, there is little practical difference between a receiver and custodian. A judge who, al-

though disqualified, passes, from the necessity of the case, a preliminary order of the character above indicated in order to preserve the estate from being dissipated or spirited away, in the time that might elapse while a qualified judge is being sought is certainly guilty of no impropriety where the circumstances are such as to show that it is to the interest of all concerned, even the alleged bankrupt himself, that there should be some person as custodian of the property or as a receiver in the nature of a custodian.

It was stated by Mr. Alexander Akerman in his testimony that Judge Speer had threatened to put in jail any attorney who raised the question of his disqualification on account of Mr. Heyward's relationship. Judge Speer denies this, and the testimony before the Committee discloses no instance where Judge Speer did put any attorney in jail for raising the question, or made any effort or suggestion to the effect that he might do so.

UNITED STATES VS. ATLANTIC COAST LINE R. R. BENNET & BRANCH.

Complaint is here made of the "arbitrary" conduct of Judge Speer in requiring Mr. J. N. Talley, one of the attorneys for the railroad company, to summarily produce papers showing the interstate character of freight being carried in trains of the railroad company, such papers being in court in the possession of Mr. Talley. The witnesses examined before the committee were Messrs. Stanley S. Bennet and Mr. Lee W. Branch, of Quitman, who with Mr. Talley, represented the railroad company. These gentlemen still represent that corporation.

This was an action brought by the United States to recover twenty penalties of \$100 each for alleged violations of the safety appliance acts. The Government was represented by Mr. R. E. Storrs, assistant United States Attorney, and Mr. R. F. Walter, Special Assistant United States Attorney. Mr. Akerman, the United States Attorney, who is also the retained counsel of the railroad company in its

cases in the United States Court, did not participate in the trial.

The Committee will recall that in this case Akerman testified that he was "neutral." A more drastic inquiry, it is submitted, will evoke that his neutrality was armed in favor of his client, the railroad company, against his client, the United States.

The Government conceiving it necessary to show the interstate character of the freight carried on the trains which bore the cars with defective appliances, had some time prior to the trial given the attorneys written notice to produce this documentary evidence. A list of the documents had been furnished them. On May 13, 1910, when the case was called, and Mr. Talley asked to produce the papers called for, he replied, "We decline to produce the papers called for because no order has been issued by your Honor in accordance with the statute." Judge Speer replied, "I will state to Mr. Talley I will give the order now." Mr. Talley insisted that he had a right to be heard on the petition for the production of the papers. Judge Speer inquired of Mr. Storrs: "Are you certain they are in court?" Mr. Storrs replied, "No, sir, but I am certain they are in the possession of the defendant company, secured for the purpose of production if the court sees fit to require it." Mr. Storrs produced the original notice which had been served on Mr. Talley several months before and stated, "We are prepared to prove those records are in the possession of the defendant at this time, they have been segregated for the purpose of production in response to that notice, that they were two days ago in the possession of the officers or agents of the company."

Judge Speer then requested Mr. Storrs to change his notice to the form of a petition to the court, and said, "You may take this order: Read and considered. In view of the recitals in the petition above set forth, and exhibit appended thereto, it is by the court ordered, that the defendants do show cause instanter why the written and documentary evidence referred to in said petition and notice to produce should not be forthwith produced."

Mr. Talley then stated, "I think we are entitled to a reasonable time to answer the allegations." Judge Speer replied, "I will give you until to-morrow morning to file your answer. You had best verify that petition, Mr. Storrs. This matter was sprung on the court a little suddenly."

Mr. Storrs then called attention to the fact that a *subpoena decus tecum* had been served on Mr. McCranie, superintendent, to produce the same papers. Mr. Talley objected to the witness producing them because the *subpoena decus tecum* had not been directed by the Judge to be issued. Mr. McCranie was, however, sworn and stated that he did not have the papers with him.

Judge Speer then directed the Clerk to "issue a *subpoena* for this gentleman as a witness in this case immedaitely."

Judge Speer then postponed further proceedings in the case until the following morning, May 14th, 1910.

On the next morning Mr. Talley stated, "We have the papers in court, and have not produced them. We desire to answer that rule and submit a demurrer. In the event your Honor directs we should produce the papers, we are ready to produce them." Judge Speer replied, "I will not pass on the rule. You have the papers in court, just produce them." Mr. Talley insisted on presenting his demurrer and answer to the petition for production of the papers. Judge Speer stated, "You may consider the rule and the demurrer as pending, but I do not make any decision on the rule. I just order you to produce the papers, and that settles it. There is no use saying any more, if you want to except to that direction, you can do so." Mr. Talley asked that an exception be noted. Mr. Walter, Special Assistant United States Attorney, stated he would call for the papers as needed.

The case then proceeded before the jury, and at the conclusion of the Government's case, the defendant offering no evidence, a verdict was directed against the defendant on the twenty counts, or \$2,000.

Mr. S. S. Bennet's version of the colloquy appears on page 2216 of the Committee Record, and is as follows:

"Mr. Talley then told the court that he had the papers there. The court then says, 'Mr. Talley, you may turn those papers over to the District Attorney.' Mr. Talley says, 'Does your Honor order us to do that?' He says, 'Mr. Talley, aren't you a practitioner at this bar?' He said he was. He said, 'When you became such didn't you take a solemn oath?' 'Yes, sir.' 'Didn't that make you an officer of this court?' 'It did.' He says, 'I direct you as an officer of this court that you turn these papers over to the District Attorney,' Mr. Branch, or I one, told Mr. Talley it was time to turn, so we delivered the papers to the District Attorney."

Mr. Bennet further says that Mr. Talley asked that an exception be noted to that ruling, that the Judge asked "what ruling?" that Mr. Talley replied, "Your Honor has directed and ordered us to turn these papers over to the District Attorney. He said, "I didn't do anything of the kind," and turned to the stenographer and said, "Take this down—I don't pretend to quote the exact language—and then dictated an order in effect that the attorneys for the railroad company having "voluntarily produced the papers, the rule is dismissed, as it calls for no order on it," or something of that kind.

A complete stenographic report of the colloquy in the case was produced before the Committee, and that portion of it relating to what occurred on the second day of the hearing appears on pages 2232 to 2335 of the Committee Record, and the official stenographer who reported it was in the court room ready to verify it as correct. As will be seen the recollection of Mr. Bennet, after a lapse of nearly four years, is at variance with the stenographic record, particularly as to the supposed colloquy as to Mr. Talley being asked if he was a member of the bar, an officer of the court, etc., and the Judge requiring him to produce papers on that ground.

Mr. Branch testified very much to the same effect as his partner Mr. Bennet, but added that the direction of the verdict was doubtless proper, "we had absolutely no evidence." The direction to the stenographer to take down

an order, was given on the preceding day, and these attorneys are evidently in error as to any such thing occurring on the second day.

The authority of the court to direct an attorney to produce papers in his possession in court is well settled by the authorities.

One such authority was called to the attention of the Committee, page 2239. That was the case of Carter & Co. vs. Southern Ry. Co., 3 Ga. App., 37, in which Mr. E. V. Padgett, who appeared before this Committee as a witness and whose complaints against Judge Speer are set out beginning on page 2324 of stenographic record, was the attorney for Carter & Co., the plaintiffs. It developed in the State court that Mr. Padgett had certain contracts in his possession in court material to the defense, and a verbal request was made upon him. The court say, "Upon the admission of plaintiff's attorney that he had the said contracts in court, and upon his refusal to produce same upon the verbal request of the defendant's attorney, for the purpose of being used in evidence, the court required the attorney for the plaintiffs to produce said contracts instanter and they were so produced, upon the oral motion of defendant's attorney, who stated in his place that they were material to the issue." On an amendment being offered in that case, a continuance was had until the next term, and written notice given to Mr. Padgett to produce the papers at the next term. When the case was again called for trial, Mr. Padgett stated that before receiving the written notice the papers "were destroyed in my office, not without my consent," and added, "When the court forced me to produce these papers at a former trial, I understood he had no power to do so if I had not had them in the court-room," and made up his mind to destroy them. Defendant moved for a judgment by default, which was overruled. The Court of Appeals sustained this decision on the ground that it appeared that the attorney had destroyed the papers before the written notice had been served on him, but remarked, "We think that the court

might have attached plaintiff's counsel for contempt of court for destroying the papers."

This is a singular instance of the hazard to the ascertainment of truth incurred when the recollection of witnesses, particularly disappointed attorneys, are heard to vary the official stenographic report of the hearing, to which the attention of the Committee is earnestly invited. Besides, Bennet says "I do not pretend to quote the exact language." Morcock is not only a man of singular integrity, but a stenographer of great accuracy. He was sworn to report accurately and transcribe correctly. He was paid by the Department of Justice. In no case has the accuracy of his reports ever been questioned. In this case to enforce the Act of Congress made to protect the lives and limbs of the railroad operatives, it is respectfully submitted that the Committee should not accept the testimony of the railroad's disgruntled attorneys to contradict the official report, and to reflect upon the righteous action of the Judge. But even if the recollection of Bennet and Branch be regarded as better evidence than the official report, there is nothing in it which is in any sense discreditable to the Judge.

DISSIPATION OF ESTATES IN BANKRUPTCY CASES.

While Mr. T. S. Felder was on the stand as a witness at Savannah, Mr. FitzHenry asked him the following question:

"Now, General, it has been said that the handling of bankruptcy estates in Judge Speer's court has been disgraceful, and that estates have been wasted by friends of Judge Speer, who were appointed receivers, custodians, attorneys, etc.; I wish you would kindly tell us what there is with reference to that assertion." Mr. Felder replied:

"There is no question, sir, that estates are wasted. It is a further fact that when it comes to selecting officers who are to administer these bankrupt estates, that only certain ones are selected, or should be selected if it is desired to have the views of counsel properly entertained; certain ones receive these benefits. If an estate is there for admin-

istering, all kinds of officers are appointed," instancing the appointment of special masters to fix the compensation of counsel, the appointment of receivers without regard to fitness, and the employment of lawyers who can reach the ear of the court. (Stenographic Record, pages 1901-3.)

The District Judge is not immediately and solely in charge of the administration of bankruptcy estates. Primarily, that is the duty of the referees, and the duties of a District Judge are wholly judicial and are largely confined to making orders of adjudication, orders approving compositions, orders of discharge, in hearing petitions to review the decisions of referees, and in other matters of a supervisory character. There are five divisions of Judge Speer's District. If a bankruptcy case is filed in any of these divisions in which Judge Speer does not happen to be present, the application for adjudication is referred to the referee. If there is a petition for a receiver, this is also referred to the referee by the clerk. After adjudication the referee calls a meeting of creditors, a trustee is elected by the creditors, the assets are sold by the trustee under the orders of the referee, and the fund is distributed by the referee. The application for discharge is addressed to the Judge, and is passed on by him, in most cases without objections being filed. If Judge Speer is in the Division in which the bankruptcy petition is filed, he signs a formal order of adjudication and the clerk refers the case to the referee for action, as above stated. If there is a contest over the adjudication, the Judge usually refers this to the referee to take evidence and make a report with his recommendations. The applications of attorneys for compensation are usually addressed to the Judge, and it is frequently true that such applications are referred to the referee, or some other attorney as special master, to hear evidence, after notice to parties at interest, and upon his report being filed and notices again given parties at interest, the application is passed on by the Judge and the fees awarded. This practice of Judge Speer's is set out in 167 Federal Reporter, page 431. No criticism has been heard of this practice either from an Appellate Court or the Department of Justice.

When it is considered that probably as many as two hundred bankruptcy petitions are annually filed in this district, and that in most of them applications for fees are made by the attorneys for the petitioning creditors, and for the bankrupt, it is evident that some such proceeding must be had in order that the record may be thoroughly examined, the condition of the estate determined, and the amount of compensation to be awarded ascertained. This results, as the records will show, in an economical and satisfactory administration of the estate, and expedites the closing up of the estates, particularly where the attorneys live at distant points in the district. The small amount paid the referee or masters, for taking the testimony and rendering this service, has been found in practice to be very beneficial to the estate and to result in moderate but generally satisfactory fees to the attorneys. It is also true that when attorneys know that their services will be thoroughly investigated, and that their compensation will depend largely on the results obtained, they are more diligent in advancing the interest of the estate than they otherwise would be, and it has been the policy of Judge Speer to allow comparatively liberal fees as a reward for profitable results obtained for creditors.

The referees who have had immediate charge and control of the bankruptcy estates since the enactment of the bankruptcy law in 1898, have been men of the highest character in the communities in which they live. The referees during this period appointed by Judge Speer have been:

The late Alexander Proudfit, of Macon, one of the most successful commercial lawyers at the Bar, a man of high standing as a citizen and as a lawyer, whose administration of bankruptcy estates has probably never been criticised by any lawyer who practiced before him.

John D. Harrell, of Bainbridge, who was United States Marshal under Cleveland's second administration.

Joseph Hansell Merrill, an ex-judge of the Superior courts of the Southern Circuit, and at one time president of the Georgia Bar Association.

W. H. Griffin, of Valdosta, for many years Judge of the City Court of Lowndes County, and now a member of the Legislature from that county.

W. C. Lane, formerly from Massachusetts, a graduate of Yale College, and now a prominent patent lawyer in Des Moines, Iowa.

J. F. McCrackin, the present Referee at Valdosta, also a graduate of Yale and other colleges, who is regarded as one of the leading members of the Bar in his home town.

Clayton Jones, of Albany, now Judge of the City Court of Dougherty County.

R. J. Bacon, the present Referee at Albany, who is widely known as a successful practitioner of the law.

Max Isaac, who several of the witnesses before the Committee have testified was an "expert" and an "adept" in the bankruptcy law, the author of a book on bankruptcy, and a contributor to several legal periodicals.

A. J. Crovatt, now Referee at Brunswick and ex-Mayor of his City and who has been long regarded as a leading member of the Southeast Georgia Bar.

A. H. MacDonell, who has served as Referee at Savannah since the enactment of the bankruptcy law, who had been for a long time Judge of the City Court of Savannah; the compiler of the City Code of Savannah, and who is a most accomplished lawyer and gentleman.

Joseph Ganahl, Sr., and after his death, Joseph Ganahl, Jr., have been the referees at Augusta. The father was a distinguished lawyer of more than state-wide reputation. The son has, on the occasion of his application for re-appointment every two years, presented to Judge Speer the almost unanimous endorsement of the Bar of the counties composing his Referee District.

Hollis Fort, present Referee at Americus, a prominent and widely known lawyer.

With such men in the actual control of the estates of bankrupts, it is difficult to perceive how Judge Speer can be charged with the supposed wastefulness of administration.

In this connection, Judge Speer begs to call attention to

the most recent report of the Attorney-General, giving a detailed statement of the bankruptcy proceedings in every District in the Union. From this it appears that the cost of administration, including attorney's fees, for the year ending June 30, 1913, in the Southern District of Georgia, amounted to 20.7% of the assets actually realized, while in the Northern District of the same State, the percentage of such cost of administration was 25.3% of the actual assets realized, as will appear from the following statement taken from the Attorney-General's report for 1913.

	Northern District Georgia (Judge Newman)	Southern District Georgia (Judge Speer)
Total amount realized from assets.....	\$621,686.99	\$338,425.92
EXPENSES		
Commissions, referee, trustee, receiver, marshal, on amounts paid lien holders	\$ 3,829.48	\$ 3,265.01
Amounts deposited with clerk for referee, trustee, clerk.....	6,484.55	3,529.00
Other commissions, receiver, trustee, marshal	28,688.36	14,711.25
Attorney's fees.....	62,952.85	26,101.93
All other expenses.....	55,672.15	22,756.70
Total costs and expenses.....	\$157,627.39	\$ 70,363.89
Percentage cost of administration based on assets.....	.253	.207

The statement compiled from the reports of the Attorney-General showing the cost of administration in various districts as compared with that in the Southern District of Georgia, has been submitted to the Committee, and is annexed hereto, and from this it will appear that the costs in Judge Speer's District is lower than in many other districts. Those districts have been selected for comparison with which the members of the Committee are presumably familiar. They are taken from many States, and the statement will convince the Committee that Felder's charge is wholly unsupported.

It should be borne in mind that much of the expense in bankruptcy cases is fixed and allowed by Statute; for in-

stance, maximum compensation based on a percentage of the amount realized is fixed for receivers, and there is a similar maximum on the percentage basis fixed for the trustees, the filing fees of the clerk, referee and trustee are fixed by Statute, as are also the commissions and fees of the referees.

The sales of property are made by the trustee, after ten days' notice to creditors, and an order of the referee authorizing such sale. The sales are confirmed by the referee, also after notice to creditors. The trustees are elected by the creditors; so that so far as sales of property are concerned, Judge Speer has no connection with them unless there is some petition filed asking him to review the order of the referee, authorizing the sale, or approving the sale.

Again, the disbursements are largely fixed by Statute, the exemption, if any, allowed the bankrupt, is determined under the laws of Georgia, as are also liens on the property. The priority of laborers' claims is fixed by Statute. Probably more than one-half of the trustees elected in Judge Speer's District are personally unknown to him. Only a small proportion of the receivers are named by him, as the referees in the Judge's absence from the division in which they preside, appoint receivers in such cases. Judge Speer has never attempted to control the employment of attorneys by trustees and when applications are made to him for permission to employ attorneys, no suggestion is made by him as to the particular person to be employed. Mr. Snodgrass, in his testimony at Savannah, stated that in one branch of the Oliver case, the referee had told him that he would have the trustee employ him, Snodgrass, and Akerman, as his attorneys, but that the trustee "went over the head" of the referee and obtained an order from Judge Speer to employ counsel. The referee has no power to designate who the attorney shall be. A reference to the record in that case will disclose that Messrs. Hawes & Pottle, of Bainbridge, were attorneys for the petitioning creditors, that Mr. Jones, a banker of Bainbridge, was elected trustee. Under a rule of court made by Judge Speer several years ago, no receiver or trustee could be authorized to em-

ploy as his counsel the attorney for the petitioning creditors, or for the bankrupt, without the special order of the District Court. Mr. Hawes represented the petitioning creditors, and the trustee desired to employ him because of his ability, his knowledge of the case, and as he represented no interest conflicting with the interest of the trustee, the trustee very properly made his application to Judge Speer instead of to the referee. Mr. Snodgrass was wholly mistaken in thinking that the trustee was "going over the head of the referee."

It is doubtless also true that much of the criticism aimed at the Judge of the District Court, is, when properly construed, directed at the bankruptcy law, itself, which is unpopular in certain sections and for various reasons. In this district it is true that fraudulent debtors cannot use the bankruptcy court to accomplish their designs, nor can large or influential creditors hope to retain preferences over less favored creditors.

The records of every case disposed of in this district are in the clerks' offices in the various divisions, and an examination of each of them will show that in no case were the assets wasted. It may be that creditors have been oftentimes disappointed, but that disappointment is often inevitable and has been due to the lack of valuable assets on the part of the debtor and not to the misconduct of Judge Speer. The criticism of courts of bankruptcy will probably continue as long as bankruptcy statutes exist.

STATEMENT SHOWING COST OF ADMINISTRATION
 OF BANKRUPTCY ASSETS FOR THE SOUTHERN
 DISTRICT OF GEORGIA AS COMPARED WITH
 THE DISTRICT OF THE RESIDENCE OF EACH
 MEMBER OF THE JUDICIARY COMMITTEE
 OF THE HOUSE OF REPRESENTATIVES
 OF THE UNITED STATES.

ATTORNEY-GENERAL'S REPORT, 1899.

District	Assets	Expenses	Pct.
Southern D. of Georgia.....\$	543,166.20	\$ 9,582.74	.017
Clayton, S. D. Ala.....	377,830.47	1,248.47	.003
Webb, W. D. N. Car.....	28,065.87	2,996.31	.106
Carlin, E. D. Va.....	227,926.92	3,970.56	.013
Floyd, W. D. Ark.....	81,500.00	4,671.00	.057
Thomas, W. D. Ky.....	521,268.29	19,571.74	.037
DuPree, E. D. La.....	702,051.55	4,157.07	.005
McCoy, D. of N. J.....	1,208,846.22	7,691.88	.003
Davis, N. D. W. Va.....	142,172.42	2,570.23	.017
McGillicuddy, D. of Maine	306,125.43	6,603.33	.021
Beall, N. D. Texas.....	646,915.73	5,707.36	.008
Taggart, D. of Kansas....	286,513.66	6,345.80	.021
FitzHenry, S. D. Ill.....	184,034.13	5,889.55	.032
Carew-Candler, S.D. N.Y.	1,308,830.46	29,718.85	.022
Peterson, D. of Ind.....	2,230,617.52	13,899.49	.006
Volstead, of Minn.....	2,362,983.62	24,058.49	.01
Nelson, W. D. Wis.....	358,374.21	3,939.60	.01
Morgan, W. D. Okla.....	61,740,09	3,422.85	.055
Danforth, W. D. N. Y....	1,308,830.46	29,718.85	.022
Dyer, E. D. Mo.....	283,110.36	815.14	.002
Graham, E. D. Pa.....	624,762.31	5,322.59	.008
General Average of Expenses			.023
Administration in Southern District of Georgia at less			.006

ATTORNEY-GENERAL'S REPORT, 1900.

District	Assets	Expenses	Pct.
Southern D. of Georgia....\$	319,401.53	\$ 2,041.16	.006
Clayton, S. D. Ala.....	75,576.06	579.23	.007
Webb, W. D. N. Car.....	66,740.93	4,780.89	.071
Carlin, E. D. Va.....	-----	-----	-----
Floyd, W. D. Ark.....	67,741.43	4,516.51	.066
Thomas, W. D. Ky.....	799,529.82	18,775.45	.023
Dupree, E. D. La.....	552,790.04	3,176.70	.005
McCoy, D. of N. J.....	1,209,467.90	7,391.53	.006
Davis, N. D. W. Va.....	138,119.09	6,180.50	.044
McGillicuddy, D. of Maine	1,264,360.91	8,015.09	.006
Beall, N. D. Texas.....	301,535.27	6,473.17	.021
Taggart, D. of Kansas.....	191,283.61	4,370.92	.022
FitzHenry, S. D. Ill.....	121,582.00	8,714.39	.071
Carew-Chandler, S.D. N.Y.	6,298,313.59	31,292.09	.004
Peterson, D. of Ind.....	606,942.06	6,307.05	.01
Volstead, D. of Minn.....	1,594,844.73	17,102.12	.011
Nelson, W. D. Wis.....	311,141.36	1,792.71	.005
Morgan, W. D. Okla.....	42,228.22	1,318.79	.031
Danforth, W. D. N. Y.....	286,845.50	3,738.82	.013
Dyer, E. D. Mo.....	283,110.36	815.14.	.002
Graham, E. D. Pa.....	1,976,424.68	7,769.07	.003
General Average of Expenses		.02	
Administration in Southern District of Georgia at less		.014	

ATTORENY-GENERAL'S REPORT, 1901.

District	Assets	Expenses	Pct.
Southern D. of Georgia....\$	113,939.58	\$ 8,881.80	.077
Clayton, S. D. Ala.....	53,749.25	2,910.30	.054
Webb, W. D. N. Car.....	21,900.39	3,378.31	.156
Carlin, E. D. Va.....	-----	-----	-----
Floyd, W. D. Ark.....	110,447.39	14,784.39	.133
Thomas, W. D. Ky.....	586,544.74	150,535.49	.256
Dupree, E. D. La.....	57,881.02	789,891.26	13.66
McCoy, D. of N. J.....	50,962.49	7,808.70	.153

District	Assets	Expenses	Pct.
Davis, N. D. W. Va.....	41,797.28	10,048.17	.24
McGillicuddy, D. of Maine	20,241.92	8,754.92	.432
Beal, N. D. of Texas.....	368,188.06	15,492.50	.042
Taggart, D. of Kansas....	97,837.56	35,847.47	.358
FitzHenry, S. D. Ill.....	149,448.14	17,247.02	.114
Carew-Chandler,S.D.N.Y.	154,913.52	47,561.32	.306
Peterson, D. of Ind.....	270,051.64	22,471.77	.083
Volstead, D. of Minn....	284,828.78	36,982.01	.13
Nelson, W. D. of Wis.....	399,128.69	22,298.58	.055
Morgan, W. O. Okla.....	11,656.98	2,574.80	.22
Danforth, W. D. N. Y....	346,758.62	45,593.33	.132
Dyer, E. D. Mo.....	91,669.58	9,063.30	.094
Graham, E. D. Pa.....	277,067.38	50,100.03	.188
General Average of Expenses			.813
Administration in Southern District of Georgia at less			.736

ATTORNEY-GENERAL'S REPORT, 1902.

District	Assets	Expenses	Pct.
Southern D. of Georgia...\$	95,121.75	\$12,104.42	.126
Clayton, S. D. Ala.....	25,144.54	3,146.88	.121
Webb, W. D. N. Car.....	38,648.70	5,461.32	.141
Carlin, E. D. Va.....	84,304.13	11,323.18	.134
Floyd, W. D. Ark.....	55,749.00	4,935.00	.088
Thomas, W. D. Ky.....	167,961.30	28,823.88	.171
Dupree, E. D. La.....	143,018.85	25,520.82	.178
McCoy, D. of N. J.....	104,899.00	21,196.39	.201
Davis, N. D. W. Va.....	53,989.19	7,954.33	.147
McGillicuddy, D. of Maine	78,211.25	13,516.87	.172
Beall, N. D. Texas.....	179,916.86	7,730.30	.042
Taggart, D. of Kansas....	208,870.15	16,016.62	.076
FitzHenry, S. D. Ill.....	33,676.47	3,104.31	.092
Carew-Chandler,S.D. N.Y.	527,441.15	54,067.68	.104
Peterson, D. of Ind.....	724,506.03	35,912.74	.049
Volstead, D. of Minn....	517,127.30	59,796.78	.115
Nelson, W. D. Wis.....	261,518.86	19,742.48	.075
Morgan, W. D. Okla.....	5,103.85	590.10	.154

District	Assets	Expenses	Pct.
Danforth, W. D. N. Y.....\$	266,153.41	\$22,385.71	.084
Dyer, E. D. Mo.....	515,904.25	47,121.63	.091
Graham, E. D. Pa.....	466,385.45	77,037.74	.165
General Average of Expenses			.119
Administration in Southen District of Georgia at more			.007

ATTORNEY-GENERAL'S REPORT, 1903.

District	Assets	Expenses	Pct.
Southern D. of Georgia....\$	158,984.21	\$11,054.44	.069
Clayton, S. D. Ala.....	40,040.51	3,255.00	.081
Webb,.W. D. N. Car.....	28,178.31	3,718.89	.132
Carlin, E. D. of Va.....	68,960.86	7,999.84	.116
Floyd, W. D. Ark.....	45,734.52	5,202.82	.113
Thomas, W. D. Ky.....	186,092.43	35,066.72	.188
Dupree, E. D. La.....	69,366.88	16,544.93	.238
McCoy, D. of N. J.....	267,316.43	27,778.13	.103
Davis, N. D. W. Va.....	32,943.23	6,666.71	.202
McGillicuddy, D. of Maine	104,775.63	17,482.92	.166
Beall, N. D. Texas.....	198,724.19	12,391.80	.062
Taggart, D. of Kan.....	175,321.36	17,207.68	.092
FitzHenry, S. D. Ill.....	110,345.39	17,675.72	.16
Carew-Chandler,S.D. N.Y.	678,682.91	116,778.96	.172
Peterson, D. of Ind.....	292,089.23	47,655.54	.163
Volstead, D. of Minn.....	347,879.36	51,356.10	.147
Nelson, W. D. Wis.....	77,282.88	13,689.75	.177
Morgan, W. O. Okla.....	13,588.28	2,917.15	.214
Danforth, W. O. N. Y....	268,350.51	33,050.81	.123
Dyer, E. D. Mo.....	347,240.92	63,807.13	.183
Graham, E. D. Pa.....	313,636.67	84,003.58	.267
General Average of Expenses			.155
Administration in Southern District of Georgia at less			.086

ATTORNEY-GENERAL'S REPORT, 1904.

District	Assets	Expenses	Pct.
Southern D. of Georgia....\$	327,500.24	\$12,501.55	.038
Clayton, S. D. Ala.....	83,541.44	10,683.72	.127
Webb, W. D. N. Car.....	19,606.15	1,497.86	.086
Carlin, E. D. Va.....	114,898.32	22,508.83	.195
Floyd, W. D. Ark.....	137,248.50	9,363.15	.068
Thomas, W. D. Ky.....	115,305.68	21,998.87	.19
Dupree, E. D. La.....	60,607.97	17,802.79	.293
McCoy, D. of N. J.....	241,018.01	8,161.67	.033
Davis, N. D. W. Va.....	90,160.71	15,847.69	.164
McGillicuddy, D. of Maine	102,113.34	24,873.37	.243
Beall, N. D. Texas.....	201,721.53	6,600.86	.032
Taggart, D. of Kan.....	92,491.50	11,552.72	.124
FitzHenry, S. D. Ill.....	43,154.56	7,833.52	.181
Carew-Chandler,S.D. N.Y.	1,687,256.10	83,408.84	.049
Peterson, D. of Ind.....	351,860.95	41,492.47	.117
Volstead, D. of Minn.....	451,261.33	52,828.75	.117
Nelson, W. D. Wis.....	325,972.48	7,028.15	.021
Morgan, W. D. Okla.....	44,051.22	5,683.06	.129
Danforth, W. D. N. Y....	586,459.63	46,733.08	.079
Dyer, E. D. Mo.....	243,047.00	37,574.37	.154
Graham, E. D. Pa.....	489,762.20	76,775.10	.156
General Average of Expenses			.119
Administration in Southern District of Georgia at less			.081

ATTORNEY-GENERAL'S REPORT, 1906.

District	Assets	Expenses	Pct.
Southern D. of Georgia....\$	235,773.27	\$22,773.00	.096
Clayton, S. D. Ala.....	160,763.09	8,751.25	.054
Webb, W. D. N. Car.....	75,328.56	6,559.31	.087
Carlin, E. D. Va.....	136,138.32	16,705.43	.122
Floyd, W. D. Ark.....	98,368.79	14,400.22	.146
Thomas, W. D. Ky.....	116,699.84	21,508.86	.184
Dupree, E. D. La.....	122,978.60	26,682.60	.216
McCoy, D. of N. J.....	132,242.34	16,735.12	.126

District	Assets	Expenses	Pct.
Davis, N. D. W. Va.....\$	114,829.83	\$17,297.97	.159
McGillicuddy, D. of Maine	170,399.84	18,961.30	.111
Beall, N. D. Texas.....	179,210.28	4,431.72	.024
Taggart, D. of Kan.....	226,399.12	30,353.03	.134
FitzHenry, S. D. Ill.....	30,492.11	6,189.98	.203
Carew-Chandler,S.D. N.Y.	1,106,631.70	224,443.69	.202
Peterson, D. of Indiana...	407,430.27	57,649.07	.141
Volstead, D. of Minn.....	408,761.92	64,574.75	.133
Nelson, W. D. Wis.....	180,610.17	73,910.91	.409
Morgan, W. D. Okla.....	133,757.83	24,312.28	.181
Danforth, W. D. N. Y.....	455,890.48	74,300.26	.162
Dyer, E. D. Mo.....	238,598.52	35,605.40	.149
Graham, E. D. Pa.....	496,797.09	161,091.47	.324
General Average of Expenses			.165
Administration in Southern District of Georgia at less			.069

ATTORNEY-GENERAL'S REPORT, 1907.

District	Assets	Expenses	Pct.
Southern D. of Georgia....\$	183,316.63	17,537.33	.095
Clayton, S. D. Ala.....	83,679.12	10,190.10	.121
Webb, W. D. of N. Car....	90,161.71	13,686.23	.162
Carlin, E. D. Va.....	108,061.30	22,018.76	.203
Floyd, W. D. Ark.....	75,455.55	10,167.69	.134
Thomas, W. D. Ky.....	133,955.94	28,091.87	.209
Dupree, E. D. La.....	58,233.41	32,133.01	.551
McCoy, D. of N. J.....	325,091.35	32,194.26	.099
Davis, N. D. W. Va.....	31,125.97	6,176.41	.198
McGillicuddy, D. of Maine	202,257.93	33,471.13	.165
Beall, N. D. Texas.....	58,016.57	4,251.39	.073
Taggart, D. of Kansas....	345,337.57	15,084.32	.043
FitzHenry, S. D. Ill.....	134,160.78	20,777.59	.154
Carew-Chandler,S.D. N.Y.	1,478,812.19	311,125.99	.21
Peterson, D. of Ind.....	667,376.63	81,945.10	.131
Volstead, D. of Minn.....	675,406.37	103,136.22	.151
Nelson, W. D. Wis.....	815,839.17	94,071.46	.115
Morgan, W. D. Okla.....	85,343.01	25,347.67	.297

District	Assets	Expenses	Pct.
Danforth, W. D. N. Y.....\$	233,932.61	\$38,973.57	.166
Dyer, E. D. Mo.....	941,248.49	58,256.82	.061
Graham, E. D. Pa.....	817,011.63	153,886.64	.188
General Average of Expenses			.179
Administration in Southern District of Georgia at less			.084

ATTORNEY-GENERAL'S REPORT, 1908.

District	Assets	Expenses	Pct.
Southern D. of Georgia....\$	244,456.15	\$27,673.91	.113
Clayton, S. D. Ala.....	207,455.93	39,813.41	.19
Webb, W. D. N. Car.....	41,305.94	8,963.11	.216
Carlin, E. D. Va.....	122,213.64	23,020.23	.188
Floyd, W. D. Ark.....	46,513.65	8,530.43	.185
Thomas, W. D. Ky.....	34,344.44	4,327.34	.125
Dupree, E. D. La.....	123,067.56	31,902.34	.251
McCoy, D. of N. J.....	354,329.83	84,154.34	.237
Davis, W. D. W. Va.....	313,701.63	24,909.48	.079
McGillicuddy, D. of Maine	103,965.13	33,238.03	.319
Beall, N. D. Texas.....	464,006.14	14,681.47	.031
Taggart, D. of Kansas...	319,148.47	60,104.32	.181
FitzHenry, S. D. Ill.....	367,590.19	41,089.50	.111
Carew-Chandler,S.D. N.Y.	1,500,370.19	303,428.05	.202
Peterson, D. of Ind.....	606,365.03	96,196.62	.158
Volstead, D. of Minn.....	768,368.25	81,494.26	.105
Nelson, W. D. of Wis.....	18,746.68	11,440.53	.61
Morgan, W. D. Okla.....	30,583.28	8,001.37	.264
Danforth, W. D. N. Y....	544,987.19	99,773.68	.183
Dyer, E. D. Mo.....	206,424.24	32,079.24	.155
Graham, E. D. Pa.....	1,774,757.93	258,116.38	.145
General Average of Expenses			.197
Administration in Southern District of Georgia at less			.084

ATTORNEY-GENERAL'S REPORT, 1909.

District	Assets	Expenses	Pct.
Southern D. of Georgia....\$	314,070.04	\$38,552.98	.122
Clayton, S. D. Ala.....	191,160.00	37,619.00	.196
Webb, W. D. N. Car.....	76,057.33	9,717.95	.127
Carlin, E. D. Va.....	243,369.33	19,371.73	.079
Floyd, W. D. Ark.....	40,147.39	9,693.23	.241
Thomas, W. D. Ky.....	239,240.94	31,179.91	.13
Dupree, E. D. La.....	58,418.56	16,673.09	.285
McCoy, D. of N. J.....	156,028.30	25,452.25	.163
Davis, N. D. W. Va.....	237,291.12	32,401.29	.136
McGillicuddy, D. of Maine	377,385.87	41,282.97	.109
Beall, N. D. Texas.....	434,320.92	39,359.60	.09
Taggart, D. of Kan.....	1,320,255.00	83,313.16	.063
FitzHenry, S. D. Ill.....	184,785.69	34,657.04	.187
Carew-Chandler,S.D. N.Y.	1,009,325.95	245,167.94	.242
Peterson, D. of Ind.....	301,839.92	53,767.89	.178
Volstead, D. of Minn.....	1,236,452.56	171,887.40	.139
Nelson, W. D. Wis.....	165,981.35	13,331.87	.08
Morgan, W. D. Okla.....	105,763.65	15,001.69	.141
Danforth, W. D. N. Y....	364,243.05	65,480.95	.179
Dyer, E. D. Mo.....	142,533.20	28,783.13	.201
Graham, E. D. Pa.....	975,174.78	137,608.09	.141
General Average of Expenses			.159
Administration in Southern District of Georgia at less			.037

ATTORNEY-GENERAL'S REPORT, 1910.

District	Assets	Expenses	Pct.
Southern D. of Georgia....\$	206,718.78	\$79,387.39	.065
Clayton, S. D. Ala.....	85,017.00	13,520.00	.159
Webb, W. D. N. Car.....	60,853.22	8,961.98	.146
Carlin, E. D. Va.....	162,843.81	25,375.52	.155
Floyd, W. D. Ark.....	48,632.94	7,301.36	.15
Thomas, W. D. Ky.....	1,088,113.90	159,663.20	.146
Dupree, E. D. La.....	202,062.23	30,490.24	.15
McCoy, D. of N. J.....	336,048.17	86,393.07	.257

District	Assets	Expenses	Pct.
Davis, N. D. W. Va.....\$	239,196.85	\$45,825.84	.191
McGillicuddy, D. of Maine	430,341.72	44,613.28	.103
Beall, N. D. Texas.....	500,939.53	29,032.61	.057
Taggart, D. of Kan.....	1,359,176.33	257,262.46	.189
FitzHenry, S. D. Ill.....	115,779.68	30,034.66	.259
Carew-Chandler,S.D. N.Y.	8,201,792.17	727,373.19	.088
Peterson, D. of Ind.....	615,003.67	96,330.77	.156
Volstead, D. of Minn.....	1,826,484.38	416,353.33	.227
Nelson, W. D. of Wis.....	82,416.01	19,239.44	.233
Morgan, W. D. Okla.....	109,718.73	24,017.84	.228
Danforth, W. D. N. Y....	395,872.95	69,905.01	.176
Dyer, E. D. Mo.....	270,856.16	54,662.47	.201
Graham, E. D. Pa.....	1,406,762.57	315,937.96	.224
General Average of Expenses			.165
Administration in Southern District of Georgia at less			.10

ATTORNEY-GENERAL'S REPORT, 1911.

District	Assets	Expenses	Pct.
Southern D. of Georgia....\$	284,209.36	\$62,336.75	.219
Clayton, S. D. Ala.....	203,701.06	33,891.90	.166
Webb, W. D. N. Car.....	181,090.72	47,998.96	.265
Carlin, E. D. Va.....	238,447.26	37,763.93	.166
Floyd, W. D. Ark.....	60,042.55	14,010.47	.233
Thomas, W. D. Ky.....	274,973.37
Dupree, E. D. La.....	108,131.41	34,885.27	.322
McCoy, D .of N. J.....	146,547.78	44,170.19	.301
Davis, N. D. W. Va.....	153,730.27	37,287.73	.242
McGillicuddy, D. of Maine	152,000.02	20,348.01	.133
Beall, N. D. of Texas.....	406,496.67	44,241.79	.108
Taggart, D. of Kan.....	3,052,922.14	216,698.94	.071
FitzHenry, S .D. Ill.....	168,247.63	23,844.45	.147
Carew-Chandler,S.D. N.Y.	7,021,759.68	697,590.67	.099
Peterson, D. of Ind.....	896,278.78	118,988.69	.133
Volstead, D. of Minn.....	534,338.85	84,348.54	.157
Nelson, W. D. Wis.....	117,726.87	35,241.00	.299
Morgan, W. D. Okla.....	115,839.40	33,030.63	.285

District		Assets	Expenses	Pct.
Danforth, W. D. N. Y.....\$		683,066.84	\$167,375.45	.245
Dyer, E. D. of Mo.....		446,783.34	77,975.83	.174
Graham, E. D. of Pa.....		1,131,436.59	313,711.39	.277
General Average of Expenses				.199
Administration in Southern District of Georgia at more				.025

ATTORNEY-GENERAL'S REPORT, 1912.

District		Assets	Expenses	Pct.
Southern D. of Georgia....\$		364,090.74	\$71,095.12	.195
Clayton, S. D. Ala.....		112,896.52	14,266.30	.126
Webb, W. D. N. Car.....		517,343.45	48,002.60	.092
Carlin, E. D. Va.....		268,178.83	42,669.79	.15
Floyd, W. D. Ark.....		217,003.27	22,165.32	.102
Thomas, W. D. Ky.....		284,460.35	44,543.64	.156
Dupree, E. D. La.....		183,646.56	34,934.08	.19
McCoy, D. of N. J.....		1,414,452.51	364,678.92	.257
Davis, N. D. W. Va.....		460,219.23	88,866.98	.193
McGillicuddy, D. of Maine		217,767.15	21,870.79	.10
Beall, N. D. Texas.....		473,032.37	57,571.52	.121
Taggart, D. of Kan.....		414,236.13	81,953.85	.197
FitzHenry, S. D. Ill.....		84,556.03	16,157.35	.191
Carew-Chandler,S.D. N.Y.		3,121,556.68	657,655.32	.21
Peterson, D. of Ind.....		740,980.77	110,925.56	.149
Volstead, D. of Minn.....		4,288,989.36	238,810.39	.055
Nelson, W. D. Wis.....		92,301.38	41,293.50	.447
Morgan, W. D. Okla.....		376,114.67	50,552.72	.134
Danforth, W. D. N. Y....		1,044,588.73	371,979.12	.355
Dyer, E. D. Mo.....		444,176.92	140,361.25	.316
Graham, E. D. Pa.....		1,934,839.52	247,016.67	.127

General Average of Expenses	.185
Administration in Southern District of Georgia at more	.01

GRAND AVERAGES OF EXPENSES

Grand average of the Districts of the members of the Committee for the years from which this statement is made 192

For the Southern District of Georgia 095

For the W. D. of N. C. Mr. Webb's District 137

For the W. D. Ark., Mr. Floyd's District 132

For the D. of Minn., Mr. Volstead's District 115

For the S. D. Ill., Mr. FitzHenry's District 15

Administration in Southern District of Georgia was .097 less than the average of the several districts making up this statatement.

Note: The Attorney-General's Report for 1905 was not available when this statement was prepared.

MISCELLANEOUS.

The scope of the investigation by your Honorable Committee was so extremely broad in its nature, both as to the period of time covered thereby as well as the subject-matters which were referred to, that it would unduly swell the volume of this Statement, already extended, to proportions which are not deemed necessary, to refer to each subject. All matters which have been considered of sufficient importance to be the subject of a detailed statement are already embraced in what has been above set forth. It has not been deemed necessary to reproduce in this Statement the entire testimony of Judge Speer when called as a witness at Savannah, and only such references to his testimony at that time are made as are indispensable to a clear understanding of the subject which this Statement deals with. There are other matters not specifically referred to in this Statement which can be dismissed with only a passing notice.

The employment by the Receiver in the Daniels case of Mr. Isaac is fully explained in the testimony of Mr. White, the receiver.

In the Electric Supply Company case at Savannah, there arose a conflict of jurisdiction between the State Court, presided over by Judge Charlton, and the United States Court for the Southern District of Georgia.

After the continuance of a situation to some extent tense for a few days, resulting from each of these courts asserting its jurisdiction over the property in controversy, it was finally suggested by Judge Speer that this question as to the jurisdiction of the respective courts should be submitted to the Supreme Court of Georgia, and following this suggestion the Receiver of the United States Court made proper application to Judge Charlton for an order recognizing the jurisdiction of the United States Court. Judge Charlton having refused to grant the order prayed for, the case was carried to the Supreme Court of Georgia by writ of error, and the views as to jurisdiction maintained by Judge Speer

were upheld by the Supreme Court of the State in a unanimous decision. (White, Receiver, *vs.* Davis, 134 Ga., p. 274.)

So far as the question of refusing to dismiss the bankruptcy proceedings in the Electric Supply Co. case is concerned, reference to the record will show that the formalities of the bankruptcy law for the dismissal of such a petition were not complied with.

In the Ohlsen case, the defendant was indicted for a violation of the Statute of the United States prohibiting the kidnapping of sailors and selling them into practical slavery, commonly known as "shanghaing." The criticism upon Judge Speer as to the trial of this case was that he overawed an ignorant and unlettered witness. It appears from the testimony that this was a witness who had been called for the defense, and Judge Speer admonished him, it is true, in all probability in an emphatic and vigorous manner, that the consequences would be serious to him if his testimony was not in exact accordance with the facts of the case. Thus the Judge took occasion, for reasons which were satisfactory to him at the time, and which the character and appearance of the witness justified, to warn the witness that a material deviation from the truth might result in consequences which were serious to him. The result was, the warning was heeded, the witness testified to those things only which he knew, and the accused was convicted, and properly so.

Col. J. W. Preston, in his testimony, makes reference to what is known as the Roberts case. This was a case which had been tried more than twenty years ago. Roberts was a postmaster, and was indicted for fraudulently issuing money orders and embezzlement of public funds. The testimony of Col. Preston will show that his recollection as to the case was in many points uncertain and inaccurate, and when his entire testimony is analyzed, it is just one of those cases tried when there was a sharp issue between the Government and the accused, and colloquys between Judge and counsel, and some irritation and temper manifested on both sides; but when the facts and circumstances are considered to-day in the light of the quiet that has come after

twenty years, no rational person can come to any other conclusion than that the accused was guilty, and the judgment was the only appropriate judgment that could have been rendered under the circumstances of the case.

It is also not amiss to state that this aged and venerable member of the Bar, although sharp in some of his criticisms in regard to the rulings and conduct of the Judge in this particular case, took occasion to say that he considered Judge Speer a man of the highest order of intellect, and a Judge who presided with greater dignity and preserved more perfect decorum than any other judge he had ever seen.

With reference to the litigation concerning the two street railways in Savannah, referred to by Mr. Osborne, it is only necessary to state that this litigation arose out of a rate war between the two lines of street railway, and the Court took jurisdiction at the instance of parties interested in order to save the disastrous results to the property and to the public by this ruinous form of competition. After the Court had obtained jurisdiction in the manner indicated other suits grew out of the initial suit, and finally a complicated litigation arose, which ultimately resulted in the restoration of normal conditions as to the street railway affairs of the city.

In the case of *Thomas vs. Atlantic Coast Line Railroad*, Mr. Osborne, one of the attorneys for the plaintiff, makes the criticism upon the Judge that he was more favorable to his client than he should have been, and unfair to the railroad company. When the facts of this case are considered, even as they appear from the testimony of Mr. Osborne himself, it is manifest that the right result was reached in the case, and that the Judge did not exceed the bounds which the law prescribes for a judge in summing up, or in the superintendence of the trial under the law and practice which is of force in the courts of the United States.

Complaint is made in some instances about the size of fees allowed to attorneys in bankruptcy cases and proceedings in equity where the court would tax the fund in court with the fees of counsel. Under the uniform practice established in this District by Judge Speer, all fees of this

character are fixed by references to special masters, after due notice and formal hearing. The reports of these masters in all cases are of file, showing the extent of the services rendered, and the value of the estate. Under the rule, notices of the filing of the reports of the special master are mailed to all interested, and with few exceptions the reports were unexcepted to, and the Court simply affirmed the finding of the master's report as of course. In some instances where exceptions were taken to the master's report, the fees of counsel were reduced, and in other instances they were increased. The most rigid scrutiny of the record in each of these instances will show that in no case was a fee allowed which was extravagant or exorbitant when the services rendered and the facts and circumstances of the case are duly considered.

The case of Rankin *vs.* Louisville & Nashville Railroad Company referred to in the testimony of Mr. Geo. S. Jones, was an action by a minor ten years of age for the homicide of his mother. The case was stubbornly contested, consuming much time in trial, and during the progress of the case there were numerous colloquys between the court and counsel, and numerous exceptions noted, complaining of alleged errors committed by the Judge during the progress of the case. This trial was reviewed upon writ of error by the Circuit Court of Appeals upon an elaborate bill of exceptions in which every incident of the trial that could be possibly made a subject of exception was assigned as error, and that appellate tribunal, after argument and consideration of the record, fully affirmed the action of Judge Speer, without preparing an opinion, the case being disposed of by a mere *Per Curiam* memorandum.

CONCLUSION.

Under the procedure which it has been thought proper to adopt in this inquiry, the Committee has probably heard every individual who has a sincere or pretended grievance against Judge Speer. When it is reflected that his judicial labors have extended through well-nigh the period of a generation, and also that there are included in his District nearly a million and a half of inhabitants, the grievances are as few in number as they have been shown unfounded in fact. The Committee has not heard from his friends, they have been given no opportunity to search the minds of the impartial. Had this been done, it would have been ascertained that Judge Speer is not without kindly appreciation by the noble people among whom he was born, whom he has served, and not only respects but loves. Had it been permitted, his contemnors, would have been overwhelmed by a mass of evidence from the upright, the patriotic and the good. The people of Georgia have lost few opportunities to show him their confidence and respect. When the great International Exposition of 1895 was convened at our capital, he, of all Georgians, was selected to make the opening address and welcome the representatives of the nations to that marvellous demonstration of the resources of his native State. A graduate of the University of Georgia, when but twenty-three years of age, he was called upon to make a principal address at its commencement. When one hundred years of the existence of that famous institution of learning had elapsed, upon him was cast the duty of its alumni to make its Centenary Address.

But not by his Alma Mater only and those she has sent forth, has been made plain the confidence of the people in the man and the Judge. For twenty-two successive years, by vote of its Board of Trustees, his has been the honor of Dean of the Law Faculty of Mercer University. Think, you Mr. Chairman, and Gentlemen of the Committee, that the wise and sagacious representatives of the two hundred and

eighty thousand members of the Church of Spurgeon and Bunyan in the State of Georgia, would have chosen an unworthy man to train their young men in the Constitution and Laws of our common country? By the same Board upon him was unanimously conferred the highest degree they can bestow on layman or lawyer. And it was at the college of his own creed, bearing the name bestowed at his birth by his youthful parents, at Emory College, he first spoke of that name whom all Americans now honor—the name Robert E. Lee.

But the appreciation of this American Judge has not been confined to Georgia alone. Six years later, on that same illustrious theme his was the honor to speak at that great University of Virginia, of which Thomas Jefferson was the founder.

In April, 1898, he had been summoned by the people of northern Illinois to speak at Galena on the birthday and at the home of Lee's greatest foeman, General Grant. Ever an advocate of the re-unification and fraternal relation between the people of our once dissevered land, it was his privilege then and there to announce that day that the grandson of Grant, in our war with Spain, had taken a commission as the officer and comrade of the nephew of Lee.

In October of the same year, in the great Auditorium in Chicago, it was his honor to speak from the same stand and follow Arch-Bishop Ireland, before President McKinley and eight thousand Americans gathered there at the Jubilee commemorative of the latest victory of the Stars and Stripes.

Three years later at the invitation of the unanimous Savannah Bar, on the celebration of the Centenary of John Marshal's appointment to the Supreme Bench, Judge Speer spoke there in the memory of the great Chief Justice.

At Yale University on the Storrs foundation, before the Independent Club, of Buffalo, before the Hamilton Club, of Chicago, and in the City of New York, at the express invitation of his son, at the centenary of Abraham Lincoln, Judge Speer also spoke.

In many another address, in many charges to the Grand Jury, on every appropriate occasion, he has striven to inculcate the truth in which he believes that

He best loves and serves his State
who country loves and serves the best.

Less than a year ago a movement, yet in progress, to divide his District and decrease his territorial jurisdiction was instituted by the leaders of those who attempted depreciation of him is before the Committee now. Five successive terms of the court were soon held in five separate divisions of his District. At each, the Grand Jury selected by law from the noble jury body, the commissioners appointed by him had chosen, assembled to the performance of their duty. Before each Grand Jury had adjourned they presented the Court a fervent protest against the proposed legislation. A copy of these presentments, certified conformably to law, is hereto appended. From the unsolicited and generous expressions of these ninety and nine grand jurors of the Southern District of Georgia, Georgians whose names and homes are given, the Committee can determine how undeserved are the aspersions the malevolent have sought to cast upon him, how unmerited the defamations which, under the methods of his accusers, while he was helpless and voiceless, have been spread throughout the length and breadth of the land, and it may also gather the irreparable injury which such methods may inflict upon the American judiciary, whose fearless independence was once, but may be no longer, the chief glory of the American system.

Respectfully submitted,
EMORY SPEER.

ANDREW J. COBB,
E. H. CALLAWAY,
W. M. HOWARD,
ORVILLE A. PARK,
GEO. W. OWENS,
of Counsel.

Macon, Georgia, February 18, 1914.

EXHIBIT.

A MEMORIAL AGAINST THE CREATION OF AN ADDITIONAL JUDICIAL DISTRICT CARVED FROM THE TERRITORY OF THE SOUTHERN DISTRICT OF GEORGIA, BY THE GRAND JURIES THEREOF.

IN RE:

THE PROPOSED DIVISION OF THE SOUTHERN DISTRICT OF GEORGIA, AND THE CREATION OF AN ADDITIONAL JUDICIAL DISTRICT.

The Southern District of Georgia is divided into five divisions, the Eastern Division with court at Savannah; the Western with court at Macon; the Northeastern with court at Augusta; the Southwestern with court at Valdosta, and the Albany with court at Albany.

Protests of the Grand Juries in each division, against the creation of an additional Judicial District and the reasons each Grand Jury assigns therefor.

RESPECTFULLY SUBMITTED TO THE HONORABLE, THE SENATORS AND REPRESENTATIVES, IN CONGRESS, THE PRESIDENT OF THE UNITED STATES, AND THE ATTORNEY-GENERAL, as requested by Grand Juries, and as a Memorial and Protest against the creation of an Additional Judicial District out of the territory of the Southern District of Georgia.

The Grand Jury of the Eastern Division, composed of the counties of Appling, Bulloch, Bryan, Camden, Chatham, Emanuel, Effingham, Glynn, Jeff Davis, Liberty, Montgomery, McIntosh, Screven, Tattnall, Toombs and Wayne, with Court at Savannah, on the 21st day of February, 1913, then

in session and before Adjournment, made to the Court, the Address following:

To the Hon. Emory Speer, Judge of the United States Court, Presiding:

We, the Grand Jury of this, the February term, 1913, of this Court, in taking leave of the Court, desire to express our sincere thanks to the District Attorney, his Assistant, the Marshal and all other officers of this Court for the many kindnesses and courtesies extended to us during the present service.

We take peculiar pride in having served at the time when your Honor had the distinction of celebrating the 28th anniversary of your accession to the bench in this Court. We heartily congratulate you, and wish you many more years of active service in your present lofty position.

The faithful, fearless and able service rendered your State and country has attracted attention far and wide. No judge has rendered nobler service, no one has striven harder to do his full duty without respect to persons. We have noted with pleasure and interest the manner in which even-handed justice is administered in this Court alike to the rich and to the poor.

We observe that there are no professional jurors, and no jury exemptions in this court, thus insuring the best calibre of jurymen.

Your labors in this district have been of greatest value to the country. The able charge of your Honor to this body has forcefully reminded us of the true principles of American government.

We beg specially to commend your clemency in permitting our poor people to go to their homes and make their crops before the sentence of the court is enforced.*

In these days when the law is endeavoring to place its

*This reference of the Grand Jury at Savannah is to the long established practice of the Court to allow poor men and "croppers" to cultivate and gather their crops before they are sentenced for slight violations of the Internal Revenue Laws. By this, great loss to the farming community and actual suffering and hunger in their families are averted.

strong hand upon the violators of the Statutes against corners in cotton, grain and other necessities of life, who depress or raise prices at will to the detriment of honest business and the ruin of the people, and when it is honestly endeavored to prevent the lawless sale of intoxicants in this State, which the Courts of the State have attempted in vain to do, and which this Court alone can successfully do, the country cannot afford to part with such judges as you have certainly proved yourself to be.

Representing as many as sixteen counties of this District, we deplore the movement to divide this District. It is our firm conviction that there is no use for it. The dockets here show no congestion, nor does other cause exist for such division.

We respectfully call attention to the fact that all the people of the District are equally concerned with the people of this city in this important matter, largely because the terminals of the great railroads and steamship lines of this section are located here and inland shippers of this section must come here to obtain relief from oppressive rates or other unlawful exactions.

We beg to enter this our protest to any movement to divide this District and present this address to the Court with the hope that your Honor will cause copies thereof to be transmitted to our Senators and Representatives in Congress, to the Department of Justice and to the President of the United States, and that the same be spread upon the minutes of this Court.

This February 21, 1913.

Respectfully submitted,
(Signed) :

	POSTOFFICE	COUNTY
L. H. Kingery, Foreman	Pulaski	Bulloch
W. D. Rogers, Secretary	Manassas	Tattnall
Orren Burke	Rocky Ford	Screven
Malcolm J. Ennis,	Dover	Screven
M. D. Oliff	Statesboro	Bulloch
M. V. Fletcher	Statesboro	Bulloch
H. I. Waters	Clite	Bulloch
Daniel Buie	Statesboro	Bulloch

C. R. Metzger	Clyo	Effingham
W. H. Harrelson	Egypt	Effingham
H. D. Brown	Graymont	Emanuel
J. W. Johnson	Garfield	Emanuel
A. D. Laurence	Thrift	Jenkins
J. L. Hutchinson	Hubert	Bulloch
M. M. Griner	Groveland	Bryan
Lee Jones	Manassas	Tattnall
J. H. Moore	Reidsville	Tattnall
A. L. Davis	Groveland	Bulloch
E. P. Kennedy	Collins	Tattnall
William H. Wood, Jr.	Daisy	Glynn
W. B. DeLoach	Brunswick	Bulloch

The Grand Jury of the Western Division, composed of the Counties of Baldwin, Bibb, Butts, Crawford, Dodge, Dooly, Hancock, Houston, Jasper, Jones, Laurens, Macon, Monroe, Pike, Pulaski, Putnam, Sumter, Telfair, Twiggs, Upson, Wilcox, and Wilkerson, with court at Macon, on the 18th day of January, 1913, then in session and before adjournment, made to the Court, the Address following:

To the Hon. Emory Speer, Judge of the United States Court, Presiding:

We, the Grand Jury, now in session, as a body, and as individuals, thank your Honor, and through you the officials of your Court, for the courtesy shown us. Because of the consideration accorded jurors in your Court, jury service has become almost a pleasure.

We recall the time when unfortunately the United States Courts, as conducted in this District, failed to enjoy the ordinary respect of citizens of the community, and were usually referred to in any save complimentary terms. We remember with appreciation, the reform of Court and Jury Body immediately after your accession to office, and the fact that since that time the best men of the community have been selected as jurors. Prosecutions for trivial violations of the revenue laws prevalent in former days were suppressed by your Honor and your humane treatment of those since convicted has brought about a practical cessation of important violations. The United States Courts of this Dis-

trict are now referred to by our citizens in terms of highest respect, and your Honor is alone responsible for this change in sentiment.

Your Courts have been of great value to this section of the country. We have seen the settlement of land titles in South Georgia bring great wealth to our cities from orderly business in that rich section. We have seen the plans of railroad wreckers defeated, interstate commerce and anti-trust laws enforced, members of trusts convicted, and embezzlers of millions actually placed within the walls of a penitentiary.

It has been our pleasure, as citizens of this community, to observe that the richest and most powerful are accorded no protection which is not extended as freely to the poorest man in the land or the most helpless orphan. Your leaning, if any, has been toward the poor and oppressed, rather than the rich and powerful.

The kind consideration always given the youngest lawyers practicing in your Courts receives the most favorable comment.

We trust it is not out of order for us to say that we recognize in the Judge of the Court a man fearless in discharge of duty, and without reproach in official or private life.

Passed unanimously by this Grand Jury, the 18th day of January, 1913.

(Signed) :

	POSTOFFICE	COUNTY
L. McManus, Foreman	Macon	Bibb
M. M. Lowery, Secretary	Americus	Sumter
W. E. Dunwody	Macon	Bibb
E. S. Vinson	Milledgeville	Baldwin
W. C. Jones	Mansfield	Jasper
W. M. Stephens	Macon	Bibb
F. L. Mallary	Macon	Bibb
J. H. C. Ethridge	Grays	Jones
R. O. Collins	Montezuma	Macon
Guy Armstrong	Macon	Bibb
Chas. A. Fricker	Americus	Sumter
A. N. Smith	Juliette	Jones
W. J. Wood	James	Jones
J. D. Donaldson	Dublin	Laurens
J. C. Martin	Milner	Pike
O. I. Hilbun	Dublin	Laurens
E. Tris Napier	Macon	Bibb

The Grand Jury of the Northeastern Division, composed of the counties of Burke, Columbia, Glascock, Jefferson, Jenkins, Johnson, Lincoln, McDuffie, Richmond, Taliaferro, Washington, Wilkes and Warren, with court at Augusta, on the 19th day of April, 1913, then in session and before adjournment, made to the Court the Address following:

Augusta, Ga., April 19, 1913.

To the Hon. Emory Speer, Judge of the United States Court, Presiding:

We, the Grand Jurors, for the April term, 1913, of the United States District Court, for the Northeastern Division of the Southern District of Georgia, at the conclusion of our labors, desire to express to you, and to the other officers of the Court, our appreciation of the many courtesies shown us.

We also, in behalf of ourselves and the entire District desire to express our particular appreciation of your able and clear charge to us at the beginning of our work.

We feel that this District is indeed fortunate in having a Judge of so much ability and learning to preside over its Courts, and view with alarm the rumor that an attempt will be made to divide the District. We, therefore, respectfully request our Senators and Members of Congress to oppose any such movement.

Assuring your Honor of our best wishes for your personal welfare, and most earnestly wishing for an uninterrupted administration of your office over the entire and undivided District.

Respectfully submitted,

(Signed) :

	POSTOFFICE	COUNTY
Paul Mustin	Augusta	Richmond
Jas. M. Rozier	Augusta	Richmond
H. P. Burum	Augusta	Richmond
J. A. White	Augusta	Richmond
Geo. F. Claussen	Augusta	Richmond
C. W. Dozier	Hilman	Taliaferro
T. O. Gunn	Crawfordville	Taliaferro
J. M. Walker, Foreman	Bath	Richmond
L. H. Cowart	Millen	Jenkins

P. H. Rice	Augusta	Richmond
R. B. Bryan	Wrightsville	Johnson
R. T. Hodges	Oconee	Washington
C. A. Matthews	Matthews	Johnson
L. P. Neel	Thomson	McDuffie
J. G. F. M. Johnson	Thrift	Jenkins
W. S. Boyd	Spread	Jefferson
W. H. Hickson	Midville	Burke
W. A. Phillips	Harlem	Columbia
E. G. Dent	Waynesboro	Burke
J. F. Neely	Waynesboro	Burke

The Grand Jury of the Southwestern Division, composed of the counties of Berrien, Brooks, Charlton, Clinch, Coffee, Decatur, Echols, Grady, Irwin, Lowndes, Pierce, Thomas and Ware, with court at Valdosta, on the 12th day of December, 1912, then in session and before adjournment made to the Court, the Address following:

The United States Grand Jury for the Southwestern Division of the Southern District of Georgia, assembled at Valdosta, Georgia.

WHEREAS, It is being rumored that an effort will be made in the near future to have Congress pass an Act creating a new District in the State, the southern portion thereof to comprise the proposed new District, and

WHEREAS, It is the sense of this Grand Jury that there is not only no good reason why such should be done, but on the contrary many good reasons why it should not be done, among others, to-wit: That the laws of the United States are, under the present status of territorial division, and under the able, distinguished, impartial and courageous Judge, now presiding over said District, being effectively and fairly administered, and

WHEREAS, The people of the State of Georgia, and particularly of the Southern District, fully recognize the benefits they enjoy from the impartial and fearless enforcement of the laws to regulate interstate commerce and prevent combinations in restraint of trade, and the creation of monopoly, known as the anti-trust laws, by Honorable Emory Speer, the present District Judge, and

WHEREAS, The removal or withdrawal of Judge Emory Speer from this portion of the District which might be occasioned by any new territorial division of the State or the Southern District thereof would, in our opinion, be a distinct loss to the people of said District, and, after so many years of association, a matter of keen regret, and

WHEREAS, It should be the policy of Congress to prevent the waste of public money by the creation of new and unnecessary judgeships, district attorneyships, marshalships and the like.

THEREFORE BE IT RESOLVED, That it is the sense of this Grand Jury that any movement to make any change whatever in the territorial division of the State of Georgia, so far as it would affect the jurisdiction of the United States District Court for the Southern District of Georgia, should meet with the instant disapproval of all the people of said Southern District of Georgia.

RESOLVED FURTHER, That a copy of these resolutions be spread upon the minutes of this Court.

RESOLVED FURTHER, That a copy of the same be furnished *The Valdosta Times* for publication.

RESOLVED FURTHER, That the Clerk of this Court be requested to send a certified copy of these resolutions to the Senators and Representatives of the State of Georgia and to the Chairmen of the Senate and House Judiciary Committees and to the Attorney-General and President of the United States, with the request that should an effort be made in the Congress of the United States to create a new District in this State, which would affect the Southern District of Georgia, as it now is, that this Resolution be used as a Memorial to Congress in opposition to such measure.

This 12th day of December, 1912.

(Signed) :

	POSTOFFICE	COUNTY
C. C. Brantley, Foreman	Valdosta	Lowndes
T. H. Calhoun, Secretary	Beach	Ware
William Edwards	Valdosta	Lowndes
Randall Davis	Blackshear	Pierce
Jesse N. Pafford	Pearson	Coffee

J. E. Webb	Hahira	Lowndes
K. Powell	Cairo	Grady
W. I. Highsmith	Argyle	Clinch
Dennis Vickers, Sr.	Ambrose	Coffee
A. C. Dickey	Beachton	Thomas
Jacob McMillan	Osierfield	Irwin
Daniel Smith	Fairfax	Ware
W. G. Lanier	Fairfax	Ware
J. D. Corbett	Lake Park	Lowndes
D. B. Lott	Lenox	Berrien
J. S. Thomas	Bainbridge	Decatur
J. J. Paultk	Alapaha	Berrien
W. F. Arnold	Valdosta	Lowndes
F. N. Bray	Cecil	Berrien
H. W. Martin	Bainbridge	Decatur
P. T. Kendall	Morvin	Brooks

The Grand Jury of the Albany Division, composed of the counties of Baker, Ben Hill, Calhoun, Crisp, Colquitt, Dougherty, Lee, Miller, Mitchell, Tift, Turner and Worth, with Court at Albany, on the 17th day of December, 1912, then in session and before adjournment, made to the Court the Address following:

The United States Grand Jury for the Albany Division of the Southern District of Georgia, in session at Albany, Georgia:

It is understood by us that there will be made in the near future an effort to have Congress create a new District in the State of Georgia, the Southern part of our State to comprise this new District, and,

WHEREAS, This Jury can see no good reason why this should be done, but for many good reasons why it should not be done, to-wit: That we now have in this, the Albany Division, a distinguished, impartial and courageous Judge presiding and in all cases the laws of the United States are forcibly, fairly and justly administered, and,

WHEREAS, The people of Georgia, and especially the people of the Southern District are fully cognizant of the great benefits which have come to them through the United States Court under a Judge who fearlessly and impartially administers the law, and,

WHEREAS, The business of the Southern Division of the State of Georgia with its present divisions is not more than one able Judge like his Honor, Judge Emory Speer, can expeditiously and easily discharge, and we deplore any movement to make a division where another Judge will be appointed, thereby increasing unnecessarily the burdens involved and the extra expense of maintaining two courts where one is ample in the territory, and,

WHEREAS, It should be the policy of Congress to prevent waste in public moneys by creating any unnecessary judgeships, district attorneyships, marshalships and the like,

THEREFORE, It is the sense of this Jury that the creation of another District would be unnecessary and unwise.

THEREFORE, Be it further resolved, that a copy of these resolutions be spread upon the minutes of this Court.

RESOLVED, FURTHER, That a copy of the same be furnished *The Daily Herald* for publication, and that the Clerk of this Court be requested to send a certified copy of these Resolutions to the Senators and Representatives of the State of Georgia, and to the Chairmen of the Senate and House Judiciary Committees, and all others in authority whose influence in such matters affect the public welfare, and that this Resolution be a memorial to Congress in opposition to the proposed unnecessary and unwise movement.

This the 17th day of December, 1912.

(Signed) :

	POSTOFFICE	COUNTY
J. R. Mott, Foreman	Albany	Dougherty
W. L. Butler	Camilla	Mitchell
W. J. Kidd	Leary	Calhoun
B. H. Askew	Arlington	Calhoun
C. J. Ganekeea	Smithville	Lee
C. E. Adams	Newton	Baker
Frank Crews	Leesburg	Lee
D. L. Wooten	Albany	Dougherty
Samuel Weldon	Albany	Dougherty
F. J. Clark	Fitzgerald	Ben Hill
J. R. Mason	Tifton	Tift
C. E. Fryer	Albany	Dougherty
Gordon Meriwether	Albany	Dougherty

L. T. Brown	Sale City	Mitchell
C. G. Bennett	Albany	Dougherty
A. V. Rodgers	Moultrie	Colquitt
T. F. Walker	Moultrie	Colquitt
Dan Brosnan	Albany	Dougherty
P. S. Burton	Smithville	Lee
A. L. Sterne, Secretary	Albany	Dougherty

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF GEORGIA.

I, Cook Clayton, Clerk of the District Court of the United States for the Southern District of Georgia, do hereby certify, that the above and foregoing is a true copy of the addresses of the Grand Juries of the Southern District of Georgia, which said addresses were read in open Court on the dates set out therein, and are on file in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, this 17th day of February, 1914.

COOK CLAYTON, Clerk.
By Lenoir M. Erwin, Deputy Clerk.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF GEORGIA—ss.

I, Emory Speer, Judge of the District Court of the United States for the Southern District of Georgia, do hereby certify that Cook Clayton, who signed the within Certificate is, and was at the time of signing the same, Clerk of the District Court of the United States for the Southern District of Georgia; that full faith and credit ought to be given to his acts and attestations given as such, and that his said Certificate and Authentication of the foregoing transcript is in due form.

In Witness Whereof, I have hereto set my hand this 17th day of February, in the year of our Lord One Thousand Nine Hundred and Fourteen.

EMORY SPEER,
Judge of the District Court of said District.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF GEORGIA—ss.

I, Cook Clayton, Clerk of the District Court of the United States for the Southern District of Georgia, do hereby certify that the Honorable Emory Speer, who signed the above Certificate, is, and was at the time of signing the same, a Judge of the District Court of the United States for the Southern District of Georgia, duly commissioned and qualified; and that full faith and credit ought to be given his acts and attestations given as such.

In Witness Whereof, I have hereto set my hand and seal of said Court this 17th day of February, in the year of our Lord One Thousand Nine Hundred and Fourteen.

COOK CLAYTON,
Clerk of the Court of said District.
By Lenoir M. Erwin, Deputy Clerk.

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